

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

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74-2614
74-2657
75-7010

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellant-Appellee

against

GEON INDUSTRIES, INC., et al.,

GEON INDUSTRIES, INC. and GEORGE O. NEUWIRTH,

Defendants-Appellants

FRANK BLOOM and EDWARDS & HANLY,

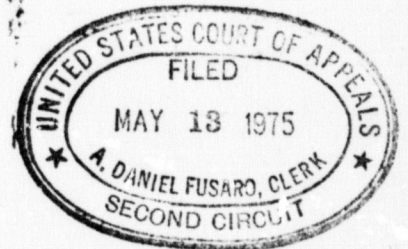
Defendant-Appellees

On Appeal from the United States District
Court for the Southern District of New York

SUPPLEMENTAL APPENDIX OF APPELLANT SECURITIES AND EXCHANGE COMMISSION

Investigative Testimony of Defendants
Marvin Rauch and James McMahon
(SEC Exhibits 15, 16 and 16A)

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Investigative Testimony of Defendants
Marvin Rauch and James McMahon
(SEC Exhibits 15, 16 and 16A)

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UNITED STATES OF AMERICA

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

-----X
In the Matter of
GEON INDUSTRIES, INCORPORATEDFile #HO-695
-----X

RECD - S.E.C.

APR 2 1974

Tuesday, March 5, 1974
6:00 o'clock P.M.26 Federal Plaza,
New York, New York

B e f o r e:

MICHAEL H. McCONIHE

-and-

MICHAEL DRAKE,

For the Commission

SFC
EXHIBIT
U. S. DIST. COURT
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LEWIS J. KORMAN, ESQ.

* * *

P R O C E E D I N G S

MR. McCONIHE: Mr. McMahon, you have been subpoenaed to appear here this evening pursuant to an investigation being conducted by the Securities and Exchange Commission pursuant to formal order in the matter of Geon Industries, Inc. During the course of the taking of your testimony you are entitled to be represented by counsel. I note the presence of a number of counsel in the room. Are these various people here to represent you today?

MR. McMAHON: No, just Mr. Berger.

MR. BERGER: Mark H. Berger, 747 Third

1
2 Avenue, and I would like to clarify the record.
3 The subpoena was only handed to us now. Mr.
4 McMahon has appeared here voluntarily prior to re-
5 ceiving the subpoena.

6 MR. McCONIHE: The record will so reflect
7 that Mr. McMahon is here after our contact with
8 his counsel and a subpoena has been issued to him
9 upon his appearance here this evening.

10 I would like, now, that the other three
11 individuals in the room please identify themselves.

12 MR. STRUM: Jay G. Strum of the law firm of
13 Kaye, Scholer, Fierman, Hays and Handler,
14 attorneys for Geon.

15 MR. KORMAN: Lewis J. Korman of the same firm.

16 MR. CONNOLLY: I am Joseph G. Connolly of
17 the same firm.

18 MR. McCONIHE: At this point, gentlemen, I am
19 afraid that I will have to ask you to leave the
20 hearing room in view of the fact that you are not
21 here to represent the witness testifying.

22 MR. STRUM: I would like to address myself
23 to that point if I may.

24 Number one, I noticed that the subpoena
25 which was served a few moments ago is addressed as

1
2 follows: Mr. James McMahon, Assistant Controller,
3 care of Geon Industries Inc., 80 Crossways Park
4 Drive, Woodbury, New York, 11797. And I would
5 like to ask you, Mr. McConihe, if it is your
6 intention at this session to ask Mr. McMahon
7 questions about matters that he either did or
8 said as an employee of the Geon Industries?

9 MR. McCONIHE: I am afraid at this point in
10 time I am unable to indicate precisely what it is
11 that I intend to enquire into with Mr. McMahon.

12 MR. STRUM: Let me say this. I have reason
13 to believe that you intend to ask Mr. McMahon
14 questions about conferences he had and things
15 he did in his capacity as an employee of Geon and
16 under those circumstances, is it your intention to
17 exclude the three of us as counsel for Geon from
18 the taking of this testimony?

19 MR. McCONIHE: I can only state for the
20 record that Mr. McMahon has indicated that you
21 are not here to represent him in any capacity
22 and I must take the witness's response as he gives
23 it to me.

24 MR. STRUM: I am not disputing Mr. McMahon's
25 statement, we are not here to represent Mr.

McMahon

MR. McCONIHE: In either his corporate or his individual capacity. You are here to represent the corporation..

MR. STRUM: We are here as attorneys for Geon, not as attorneys for Mr. McMahon.

MR. McCONIHE: I am at this point obligated to ask that you leave the hearing room since you are not here to represent the witness in any capacity.

MR. STRUM: Let the record reflect, while obviously, if you so direct us to leave, we shall indeed leave, we protest and object to it.

MR. McCONIHE: I think the record is clear on that.

(Whereupon Mr. Connolly, Mr. Korman and Mr. Strum left the room.)

(Discussion off the record.)

MR. BERGER: I would like to make a further statement for the record about Mr. McMahon's appearance.

MR. McCONIHE: While off the record certain individuals here have departed and persons remaining in the room will be recorded on the record.

MR. BERGER: I would like to note for the

1
2 record that voluntarily Mr. McMahon and myself
3 were here yesterday at approximately 1:30 for him
4 to present his testimony and you were unable to
5 reach him because you were busy with other matters
6 and we again came back today voluntarily at which
7 time you again issued the subpoena to us.

8 MR. McCONIHE: In addition to your right to
9 be represented by counsel, Mr. McMahon, we would
10 like to advise you that any testimony which you
11 give here today may be used against you in
12 evidence in a proceeding either administrative or
13 judicial, civil or criminal. If, during the
14 course of the questioning, I ask you any question
15 the answer to which you believe may tend to in-
16 criminate you or subject you to a fine, forfeiture
17 or penalty decline to answer such question on the
18 grounds of the Fifth Amendment of the U.S. Consti-
19 tution.

20 THE WITNESS: I understand that.

21 MR. McCONIHE: Further more, if during the
22 course of the testimony you wish to consult with
23 your counsel at any time, please so advise me and
24 we will take a break until such time as you have
25 had an opportunity to consult with counsel.

1
2 Do you have any particular questions before
3 we proceed?

4 THE WITNESS: I don't think so.

5
6 J A M E S G. M c M A H O N, having been first
7 duly sworn by Mr. McConihe, was examined and
8 testified as follows:

9 EXAMINATION BY MR. McCONIHE:

10 Q Would you please state your full name and
11 home address?

12 A James G. McMahon, 24 Woods Lanes, Southampton,
13 New York.

14 Q What is the G-for?

15 A Gavin.

16 Q Your home telephone number.

17 A AT 3-5394. Area code 516.

18 Q Would you please state your business
19 address and telephone number?

20 A We just moved into a new building, the American
21 Plaza Building, I don't know if it has a number and my
22 phone number -- it comes in on the switchboard. It's
23 921-8000.

24 Q Where is the American Plaza Building?

25 A It's across the street from 101 Crossways Park

1
2 in Woodbury.

3 Q What business is located there? Is there a
4 business located at that address?

5 A In our building there is a lot of them.

6 Q What is the one you are associated with?

7 A We work with Geon Intercontinental Corporation.

8 Q Is that related to Geon Industries?

9 A Yes, it's a subsidiary..

10 Q Are you in any way employed by Geon
11 Industries?

12 A No, I am not.

13 Q What, if any, positions do you hold at Geon
14 Intercontinental?

15 A I am the controller there.

16 Q Can you tell me what your duties include as
17 controller?

18 A I have overall responsibility of the accounting
19 department. I have to see to it that reports are pre-
20 pared and submitted on time. I also have the re-
21 sponsibility of seeing that the year-end audit goes
22 smoothly and is completed.

23 Q Do these responsibilities relate only to
24 Geon Intercontinental?

25 A No, I do some work for Geon Industries in that

1
2 I have a responsibility to see that consolidation, which
3 is all the Geon subsidiaries, get grouped together.

4 Q What role do you play with respect to the
5 financial operations of Geon Industries on a day-to-day
6 basis?

7 A I would have to say on a day-to-day basis very
8 little. It's only really like once a month to put a
9 consolidation together where Geon Industries comes into
10 play.

11 Q So it would be your responsibility to put
12 together monthly submissions from the various subsidiaries.

13 A That's correct.

14 Q Do the reports from the various subsidiaries
15 of Geon Industries come to you?

16 A They may come to me or may come to Frank Bloom the
17 treasurer. He sends them over to me.

18 Q But ultimately they all end up on your
19 desk for consolidation purposes?

20 A That's correct.

21 Q With respect to the year-end figures for
22 Geon Industries, and its subsidiaries for the year ending
23 December 31, 1973, can you tell me when you start receiving
24 any figures from any of its subsidiaries on an annual
25 basis?

MR. BERGER: Is that calendar 1973?

MR. McCONLINE: Yes.

A I would say approximately, maybe, three weeks ago, four weeks ago they started filtering in. We do most of our work in -- if I could explain the number of subsidiaries that we have. The subsidiaries that are not in our building, in other words, in Geon Intercontinental building, we have two locations across the street, Geon International and Geon Pan American, they are across the street and they are two of the three export corporations. They also have an international DISC at this corporation. In New York there are two corporations, American Aviation and also American Aviation Manufacturing, which is also a Disc. Down South we have Southern BAP --

Q Can I interrupt to find out what a DISC is. Is that an acronym?

MR. BERGER: Domestic International Sales Corporation.

A Yes, and it was set up to try to encourage exports out of the United States. We also have a Western Hemisphere Corporation, which is over at Geon Pan Am. Down South in Birmingham we have three corporations --

Q Can I stop you long enough to ask you what

1
2 is the point of this?

3 A You asked me what facilities were not done in
4 the house.

5 Q I didn't even realize I had asked that
6 question. What I was asking you was, when do you first
7 start receiving year-end figures for the year ending
8 1973 for the various subsidiaries of Geon Industries?

9 A We started receiving information about three to
10 four weeks ago.

11 Q Which date wise was approximately when?

12 A We closed on February -- the beginning of
13 February we started closing and we are usually the first
14 ones to get any kind of closing schedules together.

15 MR. DRAKE: Who do you mean by we?

16 A Geon Intercontinental and certain other sub-
17 sidiaries whose bookkeeping and accounting is done in
18 Woodbury.

19 Q So you had preliminary figures for Geon
20 Intercontinental the first part of February?

21 A I think that's correct, yes.

22 MR. BERGER: Just for clarification, when you
23 say figures, do you mean the raw figures?

24 MR. MCCORMICK: The preliminary figures I
25 presume. Let's find out.

1
2 A These are preliminary figures that you close the
3 books and then the others come in. So these preliminary
4 numbers are numbers that we have closed the year with,
5 but are not anywhere near final figures and we have to
6 look at the numbers ourselves. That was just Inter-
7 continental, we did not have American Aviation, we did
8 not have --

9 Q Are you talking about sales figures?

10 A No, these would be balance sheet and profit and loss

11 Q How soon after the beginning of February
12 or approximately what time did you start receiving
13 figures from the other subsidiaries?

14 A Around the following week.

15 Q When the preliminary figures for Geon Inter-
16 continental were put together the beginning of February --

17 A Can I say one thing, I have to explain something,
18 we have a west coast division, which is part of that
19 company. It's a separate division on the west coast,
20 but it's part of the corporate structure. They do their
21 own accounting.

22 Q Are you telling me you did not have figures
23 for them the first part of February?

24 A No, they were much behind us.

25 Q Can you tell me how long you have been in

1 the position of controller for Geon Intercontinent?

2 A I guess about two years.

3 Q When did you come to work for the company?

4 A In, I believe, March of 1970.

5 Q Who is your immediate superior?

6 A Frank Bloom, the treasurer.

7 Q Is he the treasurer of Geon Intercontinental?

8 A No, he is the treasurer of Geon Industries.

9 Q But, nevertheless, you still report directly
10 to him?

11 A Yes.

12 Q Who do you have that works for you?

13 A My top assistants -- I have an assistant con-
14 troller.

15 Q Can we get names?

16 A Stanley Chin and Jim McCormack. I have a chief
17 bookkeeper named Joseph Dunn.

18 Q Is there a Mr. Siegler who is employed by
19 Geon?

20 A Matty works over at Geon International. He is
21 the treasurer of Geon International and Geon Pan Am.

22 Q What is his full name?

23 A Matthew Siegler.

24 Q Does he have any work directly relating

1
2 to you?

3 A He is responsible for putting the numbers of
4 International together and sending them to me.

5 Q But he does not report to you?

6 A No, it's a separate -- they are export and we
7 are import.

8 Q I am directing your attention to the week
9 of about February 18, which is the week of George
10 Washington's birthday. Can you recall whether or not
11 you were receiving any preliminary figures from sub-
12 sidiaries during that week?

13 A I don't know, I can't say. I don't think I can
14 say yes or no to that.

15 Q Directing your attention to February 21 of
16 1974, do you recall the company Geon Industries having
17 a board meeting on that date?

18 A Could you tell me what day of the week that was?

19 Q Yes, a Thursday.

20 A Yes.

21 Q And prior to that, can you recall whether or
22 not you were receiving figures from the various sub-
23 sidiaries with respect to their operations for the
24 year 1973?

25 A Prior to that, we were receiving figures.

1
2 Q Do you know how long prior to that you
3 began receiving those figures, roughly?

4 A I think from the time we closed to that time, all
5 during that period of time we were receiving numbers
6 although I did not have -- I would like to make this
7 point -- Even on that date I did not have figures
8 from American Aviation and Geon International.

9 MR. BERGER: Are you referring to February 21

10 THE WITNESS: Yes, as of that Thursday, I
11 still did not have, the auditors have numbers and
12 I have not seen numbers like adjusted trial balance
13 on both of those companies.

14 Q But as of February 21, 1974, did you have
15 figures on the other companies and subsidiaries, other
16 than those two?

17 A Yes, I believe we had all the figures on those other
18 companies.

19 Q Can you tell me if there was anything
20 unusual with respect to what those figures showed when
21 you received them?

22 A We started putting preliminary consolidations
23 together, I believe it was Wednesday, Thursday, some-
24 where in that time. By Thursday morning --

25 Q Is this Wednesday and Thursday, February 20

1
2 and 21, just before the board meeting?

3 A That's correct. We were putting them together
4 Thursday morning, footing all these numbers across to
5 come up with a consolidation for Geon Industries.

6 Q As you were receiving these numbers from
7 the subsidiaries, not when you were putting them to-
8 gether, but as you were receiving them, was there any
9 way you could tell that these figures that you were
10 receiving were in line with your projections?

11 A I don't know what you mean by projections.

12 Q Your anticipations of what you would do
13 for the year.

14 MR. BERGER: By you, you mean the company's,
15 not his individual.

16 MR. McCONINE: Certainly.

17 A One of the companies down South, the preliminary
18 numbers that were called in by the accountant down there
19 did, at this time, indicate a possible problem in
20 that his gross profit was much lower than it should be,
21 that was reported by the accountant at this time. That
22 was the only one I think that was separate from Wood-
23 bury that we had at the time to compare to any
24 variations. In other words, basically you can tell if
25 numbers were called in, a sales number you could have a

1 sales number and you know what that projection is.
2 Gross profits have to come in in a certain range and
3 expense would run a range because every month we put a
4 consolidation together. So you know approximately
5 where you are going from month to month. That is how
6 we make up a variation. Every month when you put
7 together a consolidation, the first thing you do is
8 compare it to the previous month.
9

10 Q What my question is, whether you could notice
11 a variation when you had only received the numbers from
12 the companies, before you had consolidated?

13 A No.

14 Q Upon consolidation of those figures which
15 you had on the Wednesday or Thursday --

16 A Thursday.

17 Q -- before the board meeting, what did they
18 show?

19 A I had most of the numbers on all the imports
20 and Frank had supplied me with the income of the
21 export numbers which I had put in as a bottom line.
22 I did not have the detail up above, but I had what they
23 estimated were going to be their pre-tax income. When
24 these numbers got footed across, I am not positive of
25 the exact number, but it did not look right when I

1
2 looked at it.

3 Q What was wrong with it?

4 A It looked very low.

5 Q By how much?

6 A I don't know.

7 Q Roughly.

8 A This did not look right to me. So what I did,
9 I went back to November, we had had --

10 Q Let me stop you for just a second. You
11 said they did not look right because they were low.
12 First of all, low in relation to what?

13 A Low in relation to the previous month. We had
14 worked up internal numbers.

15 Q But you have no recollection or you
16 don't know how much lower even in rough figures?

17 A No, I could not tell until I could sit down
18 and compare. At a point I could sit down and start
19 looking and saying this was this month and this was
20 the previous month, you did not really know at that
21 time.

22 Q When did you put the figures together on
23 a consolidated basis, Wednesday or Thursday?

24 A Thursday morning. They were still footing them
25 I remember, because Frank was kind of pushing for these

1
2 numbers and he wanted a consolidation to take to the
3 board meeting and it wasn't ready. We had developed
4 a problem in the morning that came too late and we
5 were working on making sure that in fact was an error.

6 Q Was that problem separate and apart from
7 the consolidations which appeared to you?

8 A No, it's all connected. It was part of the whole
9 problem.

10 Q Let me get the sequence right. You get
11 the figures, you consolidate them?

12 A You put them in consolidation form and then you
13 foot them across.

14 Q Prior to that, your testimony was that you
15 had no way of knowing what the situation was?

16 A No, not until you put them -- you take them out
17 of the format that they are sent to you or come out of
18 the computers and you must line them up side by side.

19 Q And when you first lined them up side by
20 side, that was the first time you came to the con-
21 clusion that they appeared low?

22 A Yes.

23 Q What, if any, other problems after that
24 one did you discover?

25 A Since I found that there appeared to be something

1
2 wrong, I called Frank up and told him, "Frank, I don't
3 think that you should use these numbers until I have a
4 chance to check them over." I did not want to give
5 him information that could have been erroneous. What
6 I do is once I have these numbers, I have it by
7 corporation, I can then go back and compare. The first
8 thing I did was to have my assistant, Stanley Chin,
9 work up a variation on the gross profits. Jim Mac-
10 Cormack worked up the variations on what we call the
11 small companies and started to work on Geon Inter
12 Company, since Geon Inter Company consists really of
13 two divisions, basically four companies, you have two
14 warehouses and two branches.

15 Q When was that work completed?

16 A That work was probably completed late afternoon
17 or into the evening on that Thursday night.

18 Q Did you have any kinds of a gross profit
19 figure by noontime?

20 A No.

21 Q What figures did you have at noontime,
22 other than consolidation figures?

23 A That was basically the consolidated numbers. I
24 would have had at that point, I think, a consolidated
25 gross profit, but that is just one piece. You have to

1
2 look at all the small pieces that make up the whole.

3 Q After your initial conversation with Mr.
4 Bloom, where you indicated that you did not think he
5 should use the numbers, what was his reaction to that?

6 A Just go and dig and find out what the problem
7 was.

8 Q Did you have another conversation with him
9 after that one?

10 A I think he called me up and said that he had to
11 leave for the city and if I found anything to give him
12 a call.

13 Q Had you given him any figures prior to
14 his leaving for the city?

15 A I don't know if I gave him any.

16 Wait a minute, yes, I had a conversation
17 with him and I had in front of me at the time November,
18 eleven months ended and these December preliminary
19 consolidated numbers. And I was reading them over
20 the phone back and forth, what we had in November and
21 what was in December and everything looked right. I
22 can remember specifically Southern BAP just didn't
23 make sense.

24 These numbers looked all out of whack, they
25 definitely did not make any kind of sense.

1
2 Q Did you give him any numbers that he
3 planned to take to the board?

4 THE WITNESS: You mean physically hand him
5 numbers?

6 MR. McCONIHE: No, it's a sheet of papers
7 or anything like that.

8 A I don't remember if he took a copy or not but I
9 know I read numbers over the phone to him.

10 Q Can you tell me generally what numbers you
11 were reading to him?

12 A Pre-tax income.

13 Q Consolidated or by company?

14 A By company.

15 Q Consolidated as well?

16 A Oh, yes, I am sure I gave him --

17 Q Then how did you spend the afternoon of
18 February 21, if you can recall?

19 A The idea was to check out these variations. The
20 first schedule I worked on that I want to find out was
21 the Geon Intercontinent, since that is basically the
22 biggest piece of the company. I worked up a schedule
23 that compared the total P and Ls on the east coast
24 and the west coast and I believe I broke it down by
25 warehouse and branch and that gave me four comparisons

1
2 to work with. As I mentioned before, I had my
3 assistant going into just analysis of the gross profits
4 and my other assistant worked on the small companies
5 to see if there was any major variations on them.

6 Q How long did you work on this project on
7 that day?

8 A I did not leave there until very late that
9 evening.

10 Q Were you working on this numbers problem
11 all that time?

12 A Yes.

13 Q What about Mr. Chin, was he working for
14 that length of time as well?

15 A He did not stay as late as I did that night.

16 Q Do you recall about when he left?

17 A I am not positive.

18 Q What about Mr. MacCormack?

19 A I am not sure of that.

20 Q But they were all there later than usual?

21 A Oh, yes, this is our busiest time of the year.

22 Q About what time would you estimate you
23 left?

24 A I think it was around midnight or later.

25 Q At the time you left that evening, can

1
2 you tell me what, if anything, you had determined
3 with respect to the financial position of Geon Industries
4 consolidated?

5 A We felt that we had a problem at this point, but
6 we did not know exactly how bad a problem it was.
7 Frank had come back, I don't know what time, but we
8 sat down and I showed him some numbers. I showed him
9 what I had done during the night and I showed him what
10 Stanley had done and we worked on checking out the
11 inventories on the East Coast in case there was a
12 problem in there, since general inventories are a big
13 portion of the balance sheet and comprises a significant
14 portion of the profit and loss.

15 Q Had you determined how big a problem this
16 might be at this time in a dollar sense?

17 A No, we couldn't.

18 Q Did you have any handle on any sort of
19 dollar figure to know how bad the problem might be.

20 A I don't think you could at this time, we had
21 not done enough work at this time to really say
22 specifically what the amount was.

23 Q Did you have any individual problems that
24 you had been able to definitely ascertain in a dollar
25 amount?

1
2 A Yes, we had worked up an analysis on the gross
3 profits that compared what we were reporting in
4 November, gross profits by company, compared to what
5 it was now coming out in December.

6 Q Can you recall in rough figures what the
7 gross profit difference was between those two?

8 A I believe it was about \$600,000, but I am not
9 sure.

10 Q Of that \$600,000, by the time you left on
11 February 21, had you been able to locate any areas
12 which might account for that \$600,000?

13 A If I remember correctly Frank had found about
14 \$75,000 going up and \$75,000 going down. So the net
15 effect of that 667 we had not looked at just a small
16 part. All we could look at in that time span. We
17 looked at the east coast gross profit and we had not
18 done any work on some of the other companies or the
19 west coast branches and warehouses.

20 Q Are you telling me that by the time you
21 left that night you had not been able to locate any
22 particular problem that might be able to account for
23 some of the \$600,000?

24 A I don't think we really found anything that we
25 could say like tomorrow, when you come in, you make this

1
2 adjustment because this is wrong.

3 Q How about the booking of inter-company
4 freight? Had you figured that one out at that time?

5 A No, that was Saturday morning. I came in on
6 Saturday morning and I was back in receivables and
7 Frank came back and he raised this question about some-
8 thing to do with freight. So he sat down and explained
9 it to me on papers. Then he said, "What I want you to
10 do is take a tape of the credits that are in freight
11 out, because I think last year this freight number was
12 included in the sales or something and this year we
13 were doing it differently."

14 So I worked up this number, I forget exactly.
15 what the number was, 60 or \$70,000. But it was related
16 to something where you took a percentage of something --
17 I am not sure, Frank worked out the computations that
18 Saturday afternoon or Saturday morning and he had the
19 auditor there and they more or less agreed that this
20 could be a problem as to explaining a significant
21 portion of an error in the gross profit.

22 Q You were figuring that was around 60 or
23 \$70,000?

24 A It did not explain 60 or \$70,000, we found 60 or
25 \$70,000 which was a credit in freight out of our

1
2 wholly-owned stores and this related to some computa-
3 tions that Frank made to explain some of the difference.

4 Q Did Mr. Chin ever mention to you, to the
5 best of your recollection, on Thursday, February 21
6 a \$314,000 item?

7 A \$313,000.

8 Q What item was that?

9 A This was the previous year's intra-company profit
10 elimination that gets booked in the following year as
11 a layered item.

12 If I can explain this, last year when we sell to
13 our branches, in other words, when the warehouses sell
14 to the branches, you sell it to them with a profit in
15 there. They are part of your operations so you cannot
16 recognize that income that is sitting in their
17 inventory. So at the end of the year, you figure out
18 by a computation just how much of an intra-company
19 profit elimination you have in your branches and you
20 you eliminate the P and L effect on the warehouses.

21 The entry is a debit to sales and a credit to
22 the inventory on the warehouse. This gets booked at
23 the end of the year. In the beginning of the year
24 you have to reverse it in order to bring those
25 branches' inventory back to cost.

1
2 Now, all during the year we close by using
3 a computed gross profit, a computed inventory, be-
4 cause you don't take a physical inventory. What
5 happened is when we close it we can compute our own
6 inventories, so we can figure the inventories and book
7 them as a non-place entry, meaning it won't hit the
8 books, but will show up when it comes out of the
9 computers.

10 Every month this is done normally and it
11 is closed and goes to the computers and comes back.
12 In the month of December, because you know you have
13 to book a final inventory, which you take a physical
14 on and there is a lot of work involved, this entry
15 did not get booked at that time. Stanley --

16 Q Which December is this that it did not
17 get booked in, '73 or '72?

18 A No, '73. '72 it got booked, that was the
19 previous year.

20 So in 1973, in December, when Stanley
21 computed the warehouse gross profit, he did not take
22 into consideration the fact that he had not closed
23 the inventories. What he should have done is book a
24 debit to that cost of sales. And what happens in the
25 computation of the gross profit you take the book

1
2 purchases and you work up computations and you say, "I
3 stipulate it to be 37%." And when you come up with
4 your adjustments, you are either increasing or de-
5 creasing your computed inventories. He did not take
6 that into consideration as computation, so apparently
7 that preliminary inventory, this computed inventory,
8 was too low by that number. And we found this problem
9 early Thursday morning, when Stan was talking to
10 Frank and then I got on the phone and we hassled it out
11 over the phone and Frank came over and looked at it
12 and was a little upset about the fact of the way that
13 was handled.

14 MR. DRAKE: You say this occurred early
15 Thursday Morning?

16 A That's right. When I came to work, I guess I
17 was -- I get in usually about ten o'clock, and I
18 walked by Stan's office and he had been talking to
19 Frank and he was a little upset, Frank was yelling at
20 him and he said, "What is the matter?" And he said,
21 "Frank thinks that the intra-company profit elimination
22 was done wrong."

23 I called Frank back and I am trying to
24 explain to him I was looking at the entries in the
25 general ledger and I am trying to explain it to him

1
2 over the phone and he said, "Well look, I am coming
3 right over there." So he came over to look at it
4 and writing it down with debits and credits we realized
5 that it was done wrong at this point.

6 This did not affect your final gross
7 profit, because you had not booked your ending inventory.
8 That was a preliminary number, you book a preliminary
9 gross profit, but you don't know what your real gross
10 profit is until you book up your physical inventories.

11 Q Was this figure of \$313,000 a problem in
12 addition to the roughly \$600,000 that you had mentioned
13 earlier?

14 A No, that would have to be all related, because
15 it is all in the gross profits.

16 Q I don't mean related, but a totaled
17 problem. You have a \$600,00 problem. Then you have
18 the problem was the proper treatment or booking of this
19 intra-company profit and I am asking you whether that
20 constitutes a entire dollar problem of \$913,000 or
21 \$600,000.

22 A It would have to be just the 6, because the 3
23 would be booked and that was the number that we were
24 pulling off for the combination. That's right because
25 the intra-company profit elimination -- let me think

1 something, now.

2
3 I am trying to think if we booked that \$313,000
4 right then and there. I don't remember.

5 The \$313,000 Frank told Stanley to book this 313
6 and I believe that after that was booked, then we
7 found the 667. So that it would be that you really
8 had nine, but this is if Stanley booked, and I believe
9 he had recorded the 313 as a debit to cost of sales
10 and at that time corrected the preliminary Woodbury
11 number which came up into that consolidation so that
12 the 667 was, I believe, after the correction of the
13 \$313,000.

14 Q So the remaining problem after the
15 correction of the 313 was in the dollar amount of about
16 667,000?

17 A That's correct.

18 Q So when you left on that Thursday night
19 at midnight, the 313 had been located at least and
20 probably properly entered by that time?

21 A I believe so, yes.

22 Q And that left 667 to try to figure out?

23 A Exactly.

24 Q When you left that evening, did you leave
25 alone or did you leave --

2 A No, Frank and I left together.

3 Q How did you get home that evening?

4 A Drove.

5 Q By yourself? Did Frank drop you off?

6 A No, I had my car downstairs.

7 Q You left the office together, then you got
8 in your car and went home and Frank got in his car and
9 went home?

10 A Right.

11 Q Did you go directly home?

12 A Yes, I did.

13 Q Can you tell me what was your thought with
14 respect to the company's financial situation at the
15 time that you left that evening?

16 A I knew we had a problem. We had never had a
17 problem this big ever before and Frank and I had done
18 some preliminary work. We had footed the inventory
19 schedules, we had checked to make sure all the
20 branches were included, we had, more or less, said to
21 ourselves at this point that the east coast inventories
22 were not going to change and that unless the warehouses
23 on the west coast or branches or others we could locate
24 were in the P and L, that we had a definite problem.

25 Q What time did you get home that night?

1
2 A I think about 1, 1:30.

3 Q What did you do when you got home?

4 A I called somebody.

5 Q Who was that?

6 A Mr. Rausch.

7 Q Did you call him directly when you got
8 home?

9 A Yes, I believe so.

10 Q What did you call Mr. Rausch for?

11 A I had made the decision coming home, due to the
12 problems that were uncovered, Mr. Rausch was my broker
13 and I was going to sell my stock.

14 Q How many shares of stock did you hold
15 in Geon at that time?

16 A It's a little complicated, but I, in my account,
17 I believe, 600 shares and in my father-in-law's account
18 400 shares.

19 Q When you called Mr. Rausch, where did you
20 call him?

21 A From my home.

22 Q Was he at home?

23 A Yes, he was.

24 Q When you called him, what were your
25 instructions to him?

1
2 A I told him to sell my stock and to sell my
3 father-in-law's stock. I think I had woken him up
4 that evening and I just told him to sell my stock,
5 sell my father-in-law's stock tomorrow and I hung up.

6 Q Did he say anything before you hung up?

7 A No, he was a little groggy.

8 Q Can you recall what else you said to him,
9 if anything?

10 A Not that night, no.

11 Q You did not say anything else to him?

12 A No.

13 Q You just called him up and that one liner?

14 A Basically, yes.

15 Q He did not have any response or anything?

16 A No, I think he was half asleep.

17 Q What did you do after making the phone
18 call?

19 A Then I went to bed.

20 Q Did you have any conversations with your
21 wife before you turned in?

22 A I don't think so.

23 Q The next morning, what time do you figure
24 you got up in the morning?

25 A About 7:30 or 8:00.

Q Did you have any conversations with your wife at that time about Geon stock?

A With my wife, I don't think so.

Q Did you make any telephone calls?

A No, Mr. Rausch called me back.

Q That morning?

A Yes, he did.

Q What did he say?

A He said something to the effect -- "Did you call me last night?" And I said, "Yes."

He said, "Did you tell me to sell the stock?" And I said, "Yes."

Q He thought he had a bad dream?

A Yes. He said, "What is the problem?" And I said, "I don't know at this point, but it could be a big problem and I want to be out of the stock."

He said, "You are sure that the problem is there?" and I said, "I don't know the problem is there. It's too preliminary, but please sell my shares and my father-in-law's shares of stock."

So he said he would.

Q Do you recall, roughly, what time of morning this was?

A I think 8:00 or 8:30 because I usually leave --

1
2 if I leave my house around 9:00, I get in around 10:00
3 or 10:15, so it had to be between 8:00 and 9:00 o'clock.

4 MR. DRAKE: You say you told him it was a
5 big problem, but you did not know how big, because
6 the figures were preliminary?

7 THE WITNESS: That's correct.

8 MR. DRAKE: Why did you characterize it as
9 a big problem?

10 THE WITNESS: Because I think \$600,000,
11 if that number holds up, is a big problem. I
12 don't think that is a small number.

13 Q What time did you get into work that day?

14 A I guess I got in around 10 or so, again.

15 Q Can you tell me when was your next con-
16 versation with Mr. Rausch with respect to the Geon
17 stock situation?

18 A I think it was that following evening, because
19 while I was walking through the office one of the em-
20 ployees stopped me and said, "What is going on?"

21 I said, "What is the matter?"

22 He said, "They suspended trading in Geon
23 and the stock was down to 11 something."

24 So I had to work, I don't remember how late
25 I worked that night.

1
2 Q This was Friday night?

3 A That's right. But when I got home, I called
4 him and asked him if he had sold the stock and he told
5 me, "Yes, he had."

6 I don't remember what else we said. I
7 think he had asked me whether I had found anything in
8 the numbers and I said it was really too preliminary,
9 we were still digging and we had a lot of work to do
10 to locate it.

11 Q What else ensued during the course of that
12 conversation?

13 A I don't remember.

14 Q Did he say anything else to you or ask you
15 to do anything for him?

16 A I don't remember.

17 Q Did he tell you that he had sold your
18 stock?

19 A Yes, he had told me he sold at the high for the
20 day.

21 Q Do you recall what he sold it at?

22 A No, 14 and something.

23 Q And this was the first you heard of that
24 was when you got home in the evening and called him?

25 A That's correct.

1
2 Q Did you have any other conversations with
3 Mr. Rausch either that evening or on through that
4 weekend?

5 A I think either I called him or he may have called
6 me and I don't know what day, I think we had one other
7 conversation and maybe he called again. I had worked
8 Saturday and Sunday, so I don't remember exactly when
9 we talked, but I believe there was one more conversa-
10 tion.

11 Q During that time period?

12 A During some span around the weekend through
13 Monday, I don't remember the time but he had called
14 and he wanted to know again whether or not I had
15 found anything in the numbers and again I told him, "It's
16 a problem, we have not found anything."

17 I said, "But don't worry. We'll probably
18 find it, we always have."

19 Q Was there anything else included in that
20 telephone conversation?

21 A I don't remember.

22 Q How often would you speak with Mr. Rausch
23 in average month?

24 A I don't know, maybe twice a week, three times a
25 week. Two or three times a week at the most.

1
2 Q Can you tell me how long you had owned
3 the 600 shares of Geon stock which he sold?

4 A I don't remember how long, but I do remember
5 that he put me into the stock when it was 18, around
6 that time.

7 Q Do you recall roughly when that was?

8 A No, I don't.

9 Q You don't even have a year?

10 A It must have been 1973.

11 MR. DRAKE: You said he put you into Geon
12 at 18?

13 THE WITNESS: Yes.

14 MR. DRAKE: What do you mean by that?

15 THE WITNESS: Let me explain. My relation-
16 ship with Mr. Rausch goes back a while. He had
17 been calling up Mr. Bloom, he was an analyst,
18 he was interested in Geon and I believe he is
19 one of the early promoters of the stock. Some-
20 how I started receiving his calls and he was very
21 friendly, he was interested in Geon, he thought
22 it was a good company, he wanted to know more
23 about it. He asked to come out to the warehouse
24 and see what we had, what type of car parts we
25 sold.

One day he came out and I showed him around the warehouse, showed him what we had --

MR. DRAKE: Did he meet anyone else while he was there, Mr. Bloom or --

THE WITNESS: I don't believe so, just myself.

So he came out and we got friendly and I think we went to lunch together. I don't remember the exact sequence, but he did want me to he said he had some first issues that he wanted to make some money for me on. And something I had forgotten up until this past weekend, but the first transactions that were run in any account were not really even in my account, they were in my father-in-law's account. He had me write a check to my father, my father wrote a check to his brokerage house, Phillips Appel. Then, whenever he sold a stock, he would sent it back to my father and my father would reimburse me.

MR. DRAKE: Talking about transactions in which stock, now, Geon?

THE WITNESS: No, these were first issues, these were not Geon.

Q Can I find out what was the purpose of

1
2 handling the transactions in that manner?

3 A I don't know.

4 Q Is that the way Mr. Rausch asked that they
5 be handled and you agreed to this?

6 A Yes, sir.

7 Q Do you recall any of the new issues that
8 he put you into?

9 A There is one with a Q, Q something.

10 Q If you don't remember it, don't strain your
11 memory.

12 A I think there was something with S.P.D. or some-
13 thing. I don't know at this point whether I ever
14 made money on these transactions or lost money. I
15 had not -- I more or less trusted him to the point
16 to let him handle everything. I had no reason at that
17 time to suspect that he was anything but friendly and
18 honest and I left all the stock transactions up to him.

19 MR. DRAKE: My original question is, why
20 did you state that he put you into Geon?

21 THE WITNESS: I had some other issues, I
22 don't remember their names, but he called up one
23 day and said, "Look, Geon is at 18 and I am buying
24 some shares of Geon and putting them in the
25 account."

1
2 I don't remember when, but I know I never,
3 at that time, I had not bought any shares of
4 Geon. I had other shares of stock, but one day,
5 whatever the price, it was moving down to a
6 point where he said, "I think it's a good buy."
7 And he sold out the other shares and whatever he
8 could buy, he bought Geon.

9 Q Did he know at that time you were an employee
10 of Geon?

11 A Yes, he did.

12 Q Was this subsequent to the date he visited
13 the plant?

14 A Yes.

15 Q But you don't know how many shares he bought
16 for you at that time?

17 A Somewhere in the range of 4 or 5 hundred, I am
18 not positive.

19 Q Was this your only purchase of Geon, to
20 your knowledge?

21 A At that point, yes.

22 Q When did you subsequently, if you did,
23 purchase additional shares of Geon?

24 A I don't exactly remember the time again, but he
25 wanted me to put up \$2,500 and he was supposed to put

up \$2,500 and that would buy, I think, 400 more shares, which he put in an account in my father-in-law's name.

Q Can you recall roughly when that was?

A I think it was '73 again, but I am not positive.

Q Was that during the summer or fall of '73?

A I would have to look at my statements and see.

Q Have you got your records of when you bought it?

A Yes.

Q "Do you want to take a look at them or if you have a summary of the dates and the transactions that probably would expedite matters.

A MR. BERGER: We did not prepare a summary.

MR. McCONIHE: Let's go off the record.

(Discussion off the record.)

MR. BERGER: Here are copies of them.

MR. McCONIHE: May we have them?

MR. GERGER: I will be glad to supply them to you.

MR. McCONIHE: We will go off the record.

(Discussion off the record.)

(Short recess.)

MR. McCONIHE: Let the record reflect that while off the record counsel for Mr McMahon

1
2 handed us certain document indicating that they
3 are certain of the account records for Mr.
4 McMahon, for his account with Mr. Rausch.

5 MR BERGER: That's correct, although not
6 necessarily all in his name.

7 MR. McCONIHE: Right. And also is it fair
8 to state that we agreed while off the record
9 that you would check these documents and then
10 make available to us copies of them?

11 MR. BERGER: Yes.

12 MR. McCONIHE: Also, while off the record,
13 we had some brief discussion with respect to the
14 account and I would like to ask you, Mr. McMahon,
15 first of all whether you have reviewed all
16 these documents your counsel has supplied to us?

17 A No, I have not.

18 Q Have you had a chance to look at them at
19 all?

20 A No.

21 Q Why don't you take that chance for a
22 second?

23 MR. BERGER: I might state that these were
24 handed to me on Saturday and Mr. McMahon has not
25 seen them since that time, because they were in

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1
2 my possession.

3 Q Are these documents the originals of which
4 are in your possession?

5 A Yes.

6 Q Have you reviewed them in the past, any of
7 those documents? You must have looked at them when
8 you got them?

9 A For the most part, I would have to say that when
10 the information came in I filed it away without looking
11 at it.

12 Q Have you had a chance recently to look at
13 any of those documents?

14 A Not recently, no.

15 Q Recently, in the last three months, from
16 today back?

17 A No.

18 Q In your dealings with Mr. Rausch, can you
19 recall Mr. Rausch ever purchasing stock for you without
20 your knowing of such purchase prior thereto?

21 A You mean like if he called up and said I put you
22 into Geon or I bought this for you?

23 Q Right.

24 A Yes. I would have to say that in just about all
25 cases, except there were two times when I specifically

1
2 gave him instructions on what to do with the account.

3 One was a couple of weeks back. I wanted
4 100 shares of stock sold to pay some bills.

5 MR. BERGER: Which stock was that?

6 MR. McMAHON: Geon Industries.

7 A Then when I called him that Friday morning to
8 sell out the two accounts, were the only real two times
9 that I specifically gave him instructions to do any-
10 thing with the account.

11 Q Did you have a discretionary account with
12 Mr. Rausch?

13 A I don't know what that is.

14 Q It is an account where he has signed
15 authority from you to do whatever in his best invest-
16 ment judgment, he wants to do.

17 A I don't know.

18 Q Can you recall ever signing any documents
19 with respect to your account with Mr. Rausch?

20 A I signed a document to open up the account.

21 Q To the best of your knowledge, was the
22 information contained on that document complete and
23 correct?

24 A I don't know.

25 Q Do you recall what that document was?

1
2 A No.

3 Q Can you recall what it looked like or what
4 it was titled?

5 A No, I am sorry.

6 Q With respect to the 400 shares which were
7 in an account in the name of your father-in-law, Gagn
8 shares, to your knowledge was that account opened with
9 the authority of your father-in-law?

10 A No, it was not.

11 Q Who provided the funds that went into that
12 account?

13 A I believe I put in \$2,500 and he matched it.

14 Q He being Mr. Rausch?

15 A Yes.

16 Q And this account was setup sometime during
17 1973?

18 A I don't know if it was setup, but I know --
19 I don't know if there was anything in there before.
20 I believe there might have been some transactions in
21 that account, I am not positive, but I know at the
22 day I sold it there were these 400 shares.

23 Q When did you put up your \$2,500?

24 A I don't know, but I can find out, because I had
25 to borrow from Beneficial Finance to put the money in

there.

Q Can you tell me why you borrowed \$2,500 from Beneficial Finance to put into the accounts?

A Because I did not have the cash available.

Q Can you tell me why you buy when you do not have cash available?

A I felt Geon was a good investment. I worked for the company, we were a good company, there was no reason to think that this was a bad investment.

Q Did Mr. Rausch know that you were borrowing from Beneficial Finance?

A Yes, he did.

MR. McCONINE: We will go off the record.

(Discussion off the record.)

Q When did you first learn that Burma Oil was interested in acquiring Geon Industries?

A The first official announcement I had was when Frank sat down with me and told me. Previous to this time there had been rumors and I had also been discussing and talking to Mr. Rausch. He had also heard "a rumor" that Geon was being acquired by a company and this was, I don't know exactly the timing, but I do remember it was a while before Frank Bloom actually sat down and was able to tell me that there was a deal

1
2 with this company called Burma.

3 Q Can you give me some ideas as to when you
4 first learned that there was interest by someone in
5 acquiring Geon?

6 A I would have to just roughly say maybe three
7 weeks or a month before Frank told me and I don't have
8 the exact date but something came up, whatever it was
9 and I don't know, when Frank was able to sit down and
10 say to me, "Look, I have not been able to tell you
11 this and you probably have some ideas," which I had.

12 He had gone to England on a trip and there
13 were a lot of closed-door meetings around Geon, some-
14 thing was definitely cooking. But he had never really
15 sat down until this one day and whatever it was,
16 then they were able to say, "Now we have a deal, we
17 are trying to negotiate a deal with Burma Oil."

18 He went on to tell me something about
19 the company.

20 Q Can you remember when, roughly that was?

21 A I cannot. It has to be connected with some
22 events or some meeting, because whatever happened and
23 Frank came out of the meeting and called me into his
24 office.

25 Q Can you remember whether it was fall or

1
2 winter or spring?

3 A I would say fall or winter, I would only be able
4 to narrow it down to that point.

5 Q Prior to that time when Mr. Bloom was
6 actually talking to you, you had some indication that
7 someone was interested in acquiring Geon?

8 A That's correct.

9 Q And that was roughly three weeks or a month

10 A Somewhere in that category -- before hand.

11 Q And at any time during the period in which
12 you had this idea that somebody was interested in
13 acquiring Geon, did you communicate this to Mr. Rausch?

14 A Communicate what?

15 Q This idea of yours that somebody was
16 interested?

17 A It wasn't my idea. He was actually the first
18 one to tell me that he had heard a rumor and I don't
19 remember who, I thought he said his father or some-
20 body had told him that there was a rumor out that Geon
21 was going to be acquired.

22 Q So the first inkling you got was from Mr.
23 Rausch?

24 A That's correct.

25 MR. DRAKE: Do you recall whether or not

1
2 that rumor that you had this discussion with
3 Mr. Rausch, was that at or about the same time
4 that you began to buy the Geon stock?

5 THE WITNESS: I don't remember.

6 Q Did you ask Mr. Rausch where he was getting
7 that information from?

8 A I thought he had told me his father had told
9 him but I am not positive. It was just like a rumor
10 on the street.

11 Q You didn't quiz him on it?

12 A I didn't believe it. I thought he was -- we
13 had also been doing the acquiring.

14 Q Did you hear that information generally
15 from him more than this one time?

16 A I guess he must have told me more than once, but
17 I am not positive of that.

18 Q Has Mr. Rausch, during any time between
19 the time when you sold the Geon stock on the Friday,
20 February 22 and today, ever called you and asked you
21 if you would go along with some story that he had?

22 A Yes.

23 Q Can you recall roughly when that phone
24 call was?

25 A It was a Wednesday afternoon, I believe, I don't

1
2 remember the exact day. But it was a Wednesday after-
3 noon and I got a call, I was working in the other
4 building and I got a call from him and he said, "Go to
5 a phone in another office and call me back at this pay
6 phone." And he gave me the number. I believe we have
7 the number here someplace.

8 I called the number back and he said that --

9 MR. BERGER: We have the number if you
10 want it.

11 MR. McCONIHE: Yes, please.

12 THE WITNESS: 515-791-9298.

13 MR. DRAKE: Let the record reflect that
14 you are reading off a number.

15 THE WITNESS: It's a piece of scrap pad.

16 Q. Was this a note that you made at the time?

17 A. That's correct.

18 I went and called him at that number and
19 he told me that he had been called down to the
20 American Stock Exchange and that he was going to tell
21 them the following story: I was supposed to have called
22 my father-in-law on, I think it was the previous
23 Wednesday night to tell him that I had to sell the
24 stock because I had to pay some bills and that there
25 was nothing wrong but just sell my stock.

1
2 Then my father-in-law was tied up on
3 Thursday, could not make the call on Thursday and so
4 called him Thursday night and told him, "Please sell
5 my son-in-law's stock, he has to pay some bills, and
6 while you are at it, sell mine also."

7 And that meant he would then sell the
8 stock on Friday morning. I then had to call him --
9 I was supposed to call him back about 11:00 or 11:30
10 to ask him, if the stock had been sold at which time he
11 would tell me, "Yes, he had sold it."

12 Q That is the gist of the story that he
13 was asking you to tell?

14 A Yes.

15 Q What was your reaction to that?

16 A I was a little worried and a little upset.

17 Q What did you say to him?

18 A I don't think I said anything at this point to
19 him. He had to run. I did not know at this time but
20 I found out later that night that he had also called
21 my father-in-law with the same story that my father-
22 in-law was to say, if anybody asked, that he had
23 called him on Thursday afternoon, Thursday night and
24 that he was to say, "Sell my son-in-law's stock and
25 while you are at it, sell mine also."

2 And I did not know this until Thursday
3 night. Thursday night I called him up and I asked
4 him what happened. So he said he had told the story
5 and he says --

6 Q Let me stop you long enough, so we get the
7 right Thursday nights together.

8 The Friday that you called to sell the
9 stock --

10 A Was the previous Friday. The Thursday night,
11 Friday morning was the previous week.

12 Q So that was February 21 - 22. So a week
13 later would be February 28, March 1?

14 A I think that's correct.

15 Q So that was this past week?

16 A That's correct. I called Thursday night and
17 he told me what he had said and I told him at that
18 time, "Marv, I don't think I can lie like that because
19 I felt at that point it was an outright lie." I said,
20 "You are drawing my father-in-law into this, he only
21 has 100 shares, he doesn't even know what is going on.
22 If there is something wrong we have to face it."

23 He said something to the effect -- I told
24 him my father-in-law is too honest, he could never lie
25 and I don't think I could do it also. He said, "Well,

1
2 your father-in-law has to, because the stock is in his
3 name."

4 I don't know what that meant, because any-
5 how, after I hung up Thursday night I talked to my
6 wife and I realized that I could not, at this point,
7 go through with this.

8 The next morning I called Mr. Neuwirth, who
9 is the chairman of the board and I told him I had a
10 problem I wanted to come talk to him about it. So he
11 said, "Okay, come in and talk."

12 So I went in, whenever that was, Thursday
13 or Friday morning, I don't remember --

14 " Q Friday morning, I think it would be.

15 A And I went in and talked to Mr. Neuwirth and I
16 gave a statement that day about what Mr. Rausch had
17 asked me to do and I told him that I could not lie
18 about this matter, I had realized that I had done some-
19 thing wrong and whatever happened, happened, but I
20 could not lie about this situation.

21 Q Can you tell me what your father-in-law's
22 name is?

23 A Mr. Louis Malone.

24 Q Did you have any conversations with him
25 about this particular problem, namely the story?

1
2 A Yes. Friday morning after I made the appointment
3 with Mr. Neuwirth, I called my father-in-law at work
4 and I told him, "Dad, this guy may have called you up
5 and he wants you to tell a story." He said, "Yes."
6 And I said, "Whatever you do, if he ever calls, you are
7 to tell the truth, no matter who it is, you just tell
8 the truth." And he said, "Is anything wrong?" And I
9 said, "Don't worry, everything is going to be all right.
10 And that was the gist of the conversation."

11 Q You indicated that you made a statement on
12 that Thursday after talking to Mr. Neuwirth?

13 A That's right.

14 Q Can you tell me who you made that state-
15 ment to?

16 A There was Mr. Friedman, Frank Bloom and I think
17 Michael Pace was there also.

18 Q This was in Mr. Neuwirth's office?

19 A That's correct.

20 Q Have you had any conversations with Mr.
21 Rausch since 1st Thursday or Friday?

22 A No, I have not, but he talked to my wife twice.

23 Q What was the purpose of those conversations?

24 A The first call that she received, he wanted her
25 to call up her father and tell him that he had to tell

1
2 the story.

3 The second time he called he wanted to
4 know if I was back yet and my wife told him that I
5 was not back yet and she asked him please tell the
6 truth, and that he was drawing by father-in-law into
7 this, he was an innocent bystander and to just
8 please tell the truth.

9 Q Do you recall when those phone calls were?

10 A In the afternoon, that is all I know.

11 Q It is Tuesday now, was it the past
12 Friday?

13 A This was this past Friday, yes.

14 EXAMINATION BY MR. DRAKE:

15 Q According to the documents your counsel
16 has been so kind to furnish the commission, it appears
17 you purchased, it is in your name or in your father--
18 in-law's name, in securities of Geon --

19 A I did not purchase those.

20 Q Mr. Rausch purchased them for your account
21 or for your father-in-law's account.

22 Prior to these purchases, did Mr. Rausch
23 discuss with you those transactions?

24 A Which transactions?

25 Q I think there are transactions, November 12,

13 and the 16th, 1973...

MR. BERGER: At the risk of throwing you off the track, I don't mean to, but the account even though it may have been in Mr. McMahon's name was not for his account alone.

MR. McCONIHE: I thought he said the account in the name of his father-in-law was a 50-50 account between him and Rausch.

THE WITNESS: Yes, and the account in my name, I believe, is 100 shares that my father-in-law had bought.

MR. BERGER: In other words, the father-in-law's account was a complete blind, and the father-in-law's shares were in Mr. McMahon's account.

Q The transaction on September 12 of 400 shares -- this is in the account of James McMahon -- the shares of Geon, did you talk with Mr. Rausch prior to that?

A This is the first shares in that account. No, I did not.

Q Did you know he was buying them for you?

A I found out afterwards. He called up. The day that I knew I had Geon was when he called up and said,

2 "The stock is at 18 and I think it's a good time," and
3 he told me he had bought the shares and put them into
4 my account.

5 Q The other transactions I think occurred in
6 these various accounts in late October, the first 15
7 days of November of '73 and we are referring to the
8 transactions of this account of Geon securities --
9 during this time period, were you aware or did you
10 have any knowledge whatsoever, that someone was interes
11 in acquiring Geon?

12 A I didn't know that time, I am not positive of
13 that timing.

14 Q Is that your best recollection?

15 A That is.

16 Q You don't know whether you knew about that
17 or not?

18 A I don't know.

19 Q Did Mr. Rausch ever ask you whether anyone
20 was going to acquire Geon during this time period?

21 A Not ask me, he told me that he had heard a rumor
22 that there was an acquisition pending.

23 Q Did he ask you to confirm that rumor?

24 A He said, "If you hear anything, let me know."

25 Q Did you hear anything?

1
2 A Nothing other than a rumor. I did not
3 officially hear until Mr. Bloom told me.

4 Q You don't recall when that was?

5 A No.

6 Q When you heard something did you let
7 Mr. Rausch know about that?

8 A I did not hear anything.

9 Q You never heard anything, so you never let
10 him know?..

11 A No.

12 MR. McCONIH: I have one last question.

13 Q When you learned from Mr. Bloom about the
14 acquisition of Geon by Burma, did you communicate
15 that information to Mr. Rausch?

16 A Yes, I did.

17 Q How soon after you learned this informa-
18 tion?

19 A I don't really remember, maybe within a couple
20 of days.

21 EXAMINATION BY MR. DRAKE:

22 Q Did you know or do you know whether or not
23 Mr. Rausch had any position in the securities of Geon?

24 A Yes, he had told me he had Geon securities.

25 He had also told me, I believe, some of his friends

1
2 had bought Geon.

3 Q Did he tell you the size of that position?

4 A I never knew how many or how many people.

5 Q Did I understand you earlier to say you
6 talked to Mr. Rausch two or three times a week?

7 A That was generally -- we did not even talk
8 business. He would call and ask how the wife and
9 kids were and I would call and ask how his wife and
10 kids were. There was a friendly relationship. He
11 had taken me out to dinner and my wife and kids a
12 number of times.

13 Twice, I believe, we were invited over to
14 his pool. One other time he had invited my wife and
15 I out to his club for dinner. Two years ago he had
16 sent the kids Christmas presents, so this year I had
17 reciprocated. I think we had made some candles over
18 something and gave them to him at Christmas time.

19 And it was a very friendly relationship.

20 Q Did he talk business with you often?

21 A Not too often, occasionally and generally he
22 would say --

23 MR. McCONINE: I have no further questions.

24 MR. BERGER: I would like to clarify
25 something.

Investigative Testimony

McMahon

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When you asked before, did Mr. Rausch tell Mr. McMahon that he had an interest in Geon, the answer referred to a stock other than the one in the father-in-law's name, where he did have an interest.

MR. DRAKE: Yes.

MR. McCONIHE: Have you any further questions that you would like to ask?

MR. BERGER: I don't think so.

MR. McCONIHE: We will close the record.

(Time noted: 7:30 P.M.)

James G. McMahon

Subscribed and sworn to)
before me this _____
day of _____
1974.

Notary Public

* * *

C E R T I F I C A T E

STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

I, RHODA KAUFMAN, a Shorthand Reporter
and Notary Public within and for the State
of New York, do hereby certify that the fore-
going deposition of JAMES G. McMAHON was held
before me on the 5th day of March, 1974;

That said witness was duly sworn before the
commencement of his testimony; that said testimony
was taken stenographically by myself and then
transcribed; and that the within transcript is
a true record of the said deposition.

I further certify that I am not connected
by blood or marriage with any of the parties to
this action, nor am I in the employ of any of
their counsel, and I am not interested directly
or indirectly in the matter in controversy.

IN WITNESS WHEREOF I have hereunto set my
hand at the County and State of New York this
19 day of March 197.

Rhoda Kaufman
Rhoda Kaufman

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

FILE No. 413-630

REC'D - S.E.C.

MAR 14 1974

In the Matter of

GEON INDUSTRIES, INC.

Place New York, New York

Date March 5, 1974

Pages 1-67

CSA REPORTING COMPANY

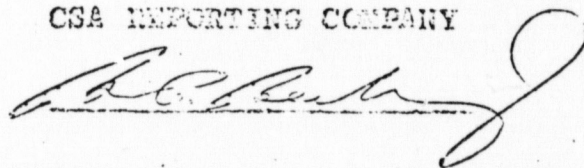
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C E R T I F I C A T E

I hereby certify that this is the transcript
of the hearing held before the Securities & Exchange
Commission on March 5, 1974
in the Matter of GEON INDUSTRIES, INC.
and that this is a full and correct transcript of the
proceedings.

CSA REPORTING COMPANY



BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

-----x
In the Matter of:
GEON INDUSTRIES, INCORPORATED
:
:
:
:
-----x

26 Federal Plaza,
New York, New York
March 5, 1974

Examination of MARVIN A. RAUCH was conducted
in private conference, pursuant to subpoena, commencing
at 3:45 o'clock p.m.

APPEARANCES:

MICHAEL PERLIS, ESQ.,
RICHARD J. RUBIN, ESQ., Washington Office

On behalf of the Securities and Exchange
Commission, Division of Enforcement.

BENJAMIN ZELENYER, ESQ.,
Of Counsel Morris, Paul, Stillman, Beiley, Esqs.,
110 East 59th Street,
New York, New York

On behalf of the witness Marvin A. Rauch.

ofo

C O N T E N T S

<u>NAMES OF WITNESSES</u>	<u>EXAMINATION BY</u>	<u>PAGE</u>
Marvin A. Rauch	Mr. Perlis	8

E X H I B I T S

<u>NO. OF EXHIBIT</u>	<u>FOR IDENT.</u>
-----------------------	-------------------

(None.)

P R O C E E D I N G S

MR. PERLIS: Let's go on the record at 3:45 p.m., on March 5, 1974.

Now, Mr. Rauch, would you please raise your right hand?

Whereupon,

MARVIN A. RAUCH

was called as a witness and, having been first duly sworn, testified as follows:

E X A M I N A T I O N

BY MR. PERLIS:

Q Would you please state your full name, Mr. Rauch?

A My name is Marvin A. Rauch, R-a-u-c-h.

Q I am Mr. Perlis, and Mr. Rubin also - who is momentarily out of the room - is here.

We are both officers of the Commission for purposes of this proceeding.

As is customary in any proceedings of this kind, sir, I wish to advise you as follows:

This is an investigation by the United States Securities and Exchange Commission, to ascertain whether there have been violations of certain provisions of the federal securities laws in connection with transactions in the securities of Geon Industries, Inc.

1 However, the facts developed in the
2 investigation might constitute violations of other
3 federal statutes.

4 Do you understand that?

5 A Yes.

6 MR. PERLIS: Let the record reflect that--
7 Counsel, have you seen a copy of the formal
8 order of investigation?

9 MR. ZELERMYER: No.

10 MR. PERLIS: At this time I will tender
11 a copy of the formal order.

12 MR. RUBIN: We will give you a minute to
13 read it and allow the witness to read it.

14 MR. PERLIS: The formal order will be
15 available throughout the entire course of these proceed-
16 ings.

17 (Short recess.)

18 MR. PERLIS: Let the record reflect that a
19 copy of a subpoena has just been tendered to Mr. Rauch,
20 issued by Mr. Rubin, pursuant to the authority granted
21 to him by the formal order of investigation.

22 THE WITNESS: Excuse me?

23 MR. ZELERMYER: Wait a second.

24 MR. PERLIS: Off the record.

25 (Discussion off the record.)

1 MR. PERLIS: Back on the record.

2 Let the record reflect that the witness
3 and counsel have had an opportunity to read the formal
4 order, and also have read it, and that it will be
5 available for their further inspection during the course
6 of testimony here today.

7 Now, Mr. Rauch, I wish to advise you at this
8 time that you have a right to be accompanied, represented
9 and advised by counsel.

10 This means that you may have an attorney
11 present, and that your attorney can advise you before, during
12 and after your examination here today.

13 Q Do you understand that?

14 A Yes.

15 MR. PERLIS: would counsel please identify
16 himself for the record?

17 MR. ZELERNYER: Benjamin Zelner, of the
18 firm of Morrison, Paul, Stillman, Bailey, 110 East 59th
19 Street, New York City.

20 MR. RUBIN: Will you state the firm
21 telephone number?

22 MR. ZELERNYER: 593-0100.

23 MR. PERLIS: Are you representing Mr.
24 Rauch individually here today?

25 MR. ZELERNYER: That is correct.

1 MR. PERLIS: Mr. Rauch, I wish to advise you as follows
2 sir:

3 Any evidence you give may and will be used againsy
4 you in any subsequent proceeeding, whether it be civil,
5 criminal or administrative.

6 You may refuse to answer any question posed gy
7 Mr. Rubin or myself, or give any evidence that may tend to
8 incriminate you or subject you to fine, penalty or forfeiture.
9 This right is granted by the First Amendment to the United
10 States Constitution.

11 Do you understand that?

12 THE WITNESS: Yes.

13 MR. PERLIS: In addition, Section 1001 of Title 18 of
14 the United States Code provides in brief that whoever
15 knowingly and willfully makes a false statement, conceals
16 or covers up by any trick, scheme or device, a material
17 fact, or knowingly uses any false writing or document in
18 connection with an investigation conducted by an agency
19 of the United States Government, shall be fined not more
20 than \$10,000 or imprisoned not more than five years or
21 both.

22 For purposes of Section 1001, both Mr. Rubin and
23 myself are considered officers of the Securities and
24 Exchange Commission.

25 Furthermore, Sectinn 1621 of Title 18 of the United

1 States Code, provides, in brief, that whoever knowingly
2 and willfully states or subscribes under oath to any
3 material matter which he does not believe to be true to
4 an officer of the United States Government, is guilty of
5 perjury and shall be fined not more than \$2000 or imprisoned
6 not more than five years, or both.

7 Once again, sir, for purposes of Section
8 1621, both myself and Mr. Rubin are considered officers
9 of the SEC.

10 Do you understand that?

11 THE WITNESS: Yes.

12 MR. PERLIS: If at any time during the
13 course of the questions you wish to consult with your
14 attorney, you may tell me to do so.

15 If you wish to consult with him outside of
16 this room, please indicate and we will make the necessary
17 arrangements.

18 If at any time during these proceedings either
19 you or your counsel wish to go off the record, please let
20 either Mr. Rubin or myself know and we will instruct the
21 reporter go off the record.

22 However, the reporter will not go off the record
23 at the request of you or your counsel.

24 Do you understand that?

25 THE WITNESS: Yes.

1 BY MR. PERLIS:

2 Q Would you state your full name, please,
3 for the record, Mr. Rauch?

4 A My name is Marvin A. Rauch.

5 MR. ZELERNYER: Messrs. Rubin and Perlis,
6 at this point, gentlemen, I would like the record to reflect
7 that I have advised Mr. Rauch, who is under subpoena here
8 today, that his failure to testify, his invocation of
9 his privilege against self incrimination under the Fifth
10 Amendment, could result in the loss of his livelihood, and he is
11 testifying here today on that premise and under my advice.

12 He is prepared to testify, but I want the
13 record to reflect the advice I have given him.

14 MR. RUBIN: Let the record also reflect
15 that while we agree that Mr. Rauch is here pursuant to a
16 subpoena, that we have not used any threat or coercion
17 threatening him with loss of his livelihood, demanding
18 that he testify here and now.

19 MR. ZELERNYER. I understand what you say,
20 Mr. Rubin.

21 However, I have advised him that his refusal
22 to testify before the Securities and Exchange Commission
23 could result in the loss of his employment as a member
24 of the securities industry.

25 MR. RUBIN: Okay.

1 BY MR. PERLIS:

2 Q Have you ever used any other names?

3 A No.

4 Q What was your place and date of birth,
5 please?

6 A I was born in New York on March 13, 1941.

7 Q Your social security number?

8 A 128-30-3713.

9 Q What is your home address and telephone
10 number?

11 A 1069 Channel Road, Hewlett, New York 11557.
12 Telephone No. 516-374-7452.

13 Q What is your business address and telephone
14 number?

15 A 1300 Peninsula Boulevard, Hewlett, New York
16 11557.

17 The phone number is 516: 791-4300.

18 Q What business is located at that address?

19 A Edwards and Hanley.

20 Q What is your position with Edwards and Hanley?

21 A I am a registered rep.

22 Q Since when have you been a registered
23 representative with Edwards and Hanley?

24 A Since August 22 or 23 of 1973, to the
25 present time.

1 Q Would you please give a brief resume of
2 your educational background and employment experience,
until such time as you joined Edwards and Hanley?

3 A Yes. I went to New York City Community
4 College in Brooklyn, where I graduated, I think--I am
5 pretty sure in 1963, with Bachelor of Science degree in mechani
6 cal--I just don't know the last. Some form of engineering,
7 but it wasn't completely mechanical engineering.
8

9 I worked for my father, who was in the sheet
10 metal business for a short period of time and then I
11 went to work in the ladies coat and suit industry, in
12 New York City.

13 In September of 196--September of October
14 of 1967, I joined the firm of Phillips, Appell and Walden.
15 At that time it was located at 469 Seventh Avenue, New
16 York City.

17 BY MR. RUBIN:

18 Q In what capacity?

19 A As a registered rep.

20 Q When did you become actually a registered
21 rep?

22 A In April of 1963.

23 Q Have you ever testified before the SEC or
24 any of the Exchanges, in any disciplinary or any other
25 proceeding, prior to the Geon matter?

A Now I did not.

Q Have you ever been subject to any disciplinary proceeding, by the Exchanges or by the Commission, in any matter whatsoever?

A No. I have not.

BY MR. PERLIS:

Q Have you ever been convicted under any State or Federal law, during the last ten years, for any crime, not including traffic offenses?

A No.

BY MR. RUBIN:

Q You mentioned that you were employed by Edwards and Hanley in August 1973?

A That is correct.

Q What led to your employment by Edwards and Hanley?

A I went to Edwards and Hanley--excuse me a minute.

(Witness and his counsel confer.)

MR. ZELERNYER: May we go off the record?

(Discussion off the record.)

MR. RUBIN: On the record.

THE WITNESS: I went to Edwards and Hanley because it is convenient, in one respect as to where I reside, and second of all, to the product lines they

1 have to offer people.

2 Q By product lines, can you describe what
3 you mean by that?

4 A Yes. They offer to the public, we have
5 mutual funds, we have a Syndicate Department; we have
6 life insurance sales. I would say that is about the
7 general--

8 Q Did you bring substantially all of your
9 customers or clients with you from Phillips, Appell, when you
10 transferred to Edwards and Hanley?

11 A Yes, I did.

12 Q Approximately what percentage would you
13 say, all 95 percent?

14 A I would say 99.9; one customer didn't.

15 Q Approximately how many customers did you have
16 at Phillips, Appell?

17 A Approximately 200, 250.

18 Q Would you characterize them as active
19 accounts, generally?

20 A No, not all active.

21 BY MR. PERLIS:

22 Q How many active accounts did you have?

23 A Active in the sense of how many trades
24 would you say?

25 Q At least one trade a month.

1 A I would say maybe around ten to thirty-five.

2 BY MR. RUBIN:

3 Q On a weekly basis?

4 A A weekly basis. Maybe two, three; something
5 like that. Very small. I have one on a daily basis.

6 Q Did there come a time either at Phillips,
7 Appell and Walden, or subsequent to your leaving Phillips,
8 Appell, that you became aware of Geon Industries?

9 A I was aware of Geon Industries while I was
10 at Phillips, Appell.

11 Q How did you become aware of Geon?

12 A I bought Geon Industries in May of 1969,
13 for a client of mine, on the unsolicited basis. When I
14 heard that this client bought the particular issue,
15 I looked into the company as what kind of company it was,
16 because I ordered--it was a new issue at the time, so I
17 ordered a prospectus on the company, which was--I just
18 want to get the exact date.

19 Q Who was the customer, do you recall?

20 A Yes; a Mr. Fink. A Mr. Leo Fink.

21 BY MR. PERLIS:

22 Q Was he in any way associated with Geon
23 Industries, Inc.?

24 A No.

25

1 BY MR. RUBIN:

2 Q Did Phillips, Appell participate in the
3 offering of the new issue?

4 A Not in the new issue; no.

5 Q Did you get it for him at the new issue
6 offering?

7 A No.

8 Q Or the after market?

9 A After market. That date was May 13,
10 1969.

11 Q What led you to follow up this particular
12 issue, because Mr. Fink had expressed an interest?

13 A I know Mr. Fink is a pretty smart investor,
14 and when I received the prospectus, on the company, I
15 looked into it further.

16 The field they were in, I thought, was
17 most attractive and a tremendous, tremendous growth
18 situation.

19 Q Did you contact anyone at the company at
20 that time?

21 A Yes After I--I contacted a Mr. Frank
22 Bloom at the company.

23 BY MR. PERLIS:

24 Q Were you aware of what his position was at the
25

1 company?

2 A Yes, I am pretty-sure he was the treasurer
3 of the company.

4 BY MR. RUBIN:

5 Q Where did you get his name from, the
6 prospectus?

7 A Right.

8 Q This was also in May of 1969 or there-
9 abouts?

10 A Yes. Either May or--no. I would say--I would
11 say it would be either the end of 1969 or 1970,
12 that I started to contact the company.

13 Q Approximately how many shares did Mr. Fink
14 purchase in May of 1969?

15 A At the time two thousand shares.

16 Q At approximately what price, do you recall,
17 sir?

18 A Yes.

19 MR. ZELERMYER: Do you gentlemen want the
20 record to reflect that Mr. Rauch is referring to his
21 index sheet?

22 I think it is clear he does not remember all of
23 this.

24 THE WITNESS: At \$ and \$ 1/2.

25 Q Did you make any other appreciable purchases,

1 during the rest of 1969 for customers?

2 A No, not in 1969.

3 Q Did there come a time after 1969 that
4 you began to acquire shares on behalf of your own or
5 customer accounts?

6 A Yes.

7 Q What led to these purchases, and approximately
8 when did they occur?

9 A I started taking positions in Geon in
10 1970.

11 Q Without going through date by date.

12 A I started taking positions in Geon in 1970.
13 The basic reason was, at that time the imports coming in
14 to the United States, started to make new highs. And I
15 felt the way to take advantage of the rise in the imports,
16 into the United States, of small cars, was to buy Geon
17 Industries, because they, from information I read on the
18 company, they had parts for roughly 95 percent of all the
19 foreign cars and trucks that are imported into the United
20 States.

21 Q Approximately how many total shares did you
22 purchase in 1970, significant, in excess of 10,000
23 shares?

24 A Yes. I would say so.

25 BY MR. PERLIS:

Q Did you purchase any for your own account?

"This page is from an exhibit that was marked for
identification, but was not received into evidence."

1 A I am just wondering about the date. Yes, I
2 did. I just want to give you when I bought it. In 1971 I
3 bought it.

4 BY MR. RUBIN:

5 Q Did there come a time that a Mr. McMahon
6 because a customer of yours?

7 A Yes, yes, he became a customer of mine.

8 Q When did that occur?

9 A In June of 1972.

10 Q That is while you were at Phillips, Appell?

11 A Correct.

12 Q What was Mr. McMahon's position at that
13 time?

14 A He was employed by Geon Industries.

15 BY MR. PERLIS:

16 Q Were you aware of that at that time?

17 A Yes, I was.

18 Q Did you fill out a new account card with
19 respect to Mr. McMahon, at that time?

20 A Yes, I did.

21 Q What did you list his employment as?

22 A I listed as--he was employed by Arthur
23 Anderson & Company, 1345 Avenue of The Americas, New
24 York.

25 Q At that time you knew he was no longer employed

1 at Arthur Anderson & Company?

2 A That is correct.

3 Q Did Mr. McMahan tell you to list his employment
4 at Arthur Anderson?

5 A That is correct.

6 Q What reason did he give for so listing his
7 name?

8 A He felt he didn't want anybody to know he
9 worked for a public company and for anybody, whoever
10 he felt might see this new account form, he wanted to say
11 that he worked, which he did, at Arthur Anderson. I
12 don't know what time, or when he worked there, but he told
13 me he did work there.

14 BY MR. RUBIN:

15 Q Did you discuss with Mr. McMahan the
16 relevance of the card, that occasionally spotchecks
17 are done on employment, and various other things on a
18 card?

19 A No, I never did.

20 MR. RUBIN: Off the record.

21 (Discussion off the record.)

22 MR. PERLIS: On the record.

23 BY MR. PERLIS:

24 Q Mr. Rauch, at this time I would once again
25 point out to you your Fifth Amendment rights, and would like

1 to state that continued questioning by Mr. Rubin or
2 myself is to be taken in no way as either an expression
3 or implied grant of immunity to you.

4 We have neither the authority, the power to
5 make such grant, even if we were inclined to do so at this
6 time.

7 MR. RUBIN: Which we are not.

8 MR. PERLIS: I just want to let you know
9 you are represented by counsel today and that I wanted
10 to point out once again, sir, your Fifth Amendment
11 rights, as well as to indicate what I previously said
12 regarding our continued questioning and the immunity
13 question.

14 Do you understand that? And does your
15 counsel understand that?

16 MR. ZELERMYER: I understand what you
17 have said.

18 I am not sure I understand why you have
19 said it.

20 MR. RUBIN: Just to make it clear that our
21 continued questioning could not be construed as to state
22 that we are asking Mr. Rauch to abrogate his rights under the
23 Fifth Amendment to the Constitution, nor to imply we are
24 granting him immunity from continued questioning, because
25 of threat or otherwise.

Investigative Testimony- Rauch

20

1 MR. ZELERNYER: I understand.

2 MR. RUBIN: I want the record to be
3 expressly clear that we have ted Mr. Rauch
4 immunity, nor do we have authority or the intention
5 to do so.

6 MR. ZELERNYER: There has been no
7 suggestion of any immunity, so I have not had that
8 impression, and I do not think Mr. Rauch has had that
9 impression.

10 I would certainly advise him that he
11 does not have immunity.

12 He understood that he has a privilege,
13 under the United States Constitution, to refuse to be a
14 witness against himself.

15 He has been subpoenaed here today, and
16 he also understands that I have advised him that if he
17 invoked his privilege not to testify, he might well lose
18 his employment in the securities industries, and he is
19 here today, as I said, prepared to testify, with
20 that understanding.

21 MR. RUBIN: Are you--

22 MR. PERLIS: We also want you to understand
23 that the obverse is not necessarily true, that by
24 testifying, he is guaranteeing continued employment
25 in the securities industries.

Investigative Testimony- Rauch

21

1 MR. ZELERMYER: I didn't mean to
2 suggest any such thing.

3 MR. RUBIN: Just one additional thing. His
4 right to gain livelihood in the securities industries can
5 come from numerous sources, that is the American Stock
6 Exchange, from Edwards and Hanley, from the SEC, as to
7 various different forms of administrative proceedings
8 and disciplinary proceedings.

9 And that the SEC is not telling Mr. Rauch
10 that if you refuse to testify at this point that he would
11 not be able to gain a livelihood from the securities
12 industry.

13 MR. ZELERMYER: I understand the SEC has
14 not told him that explicitly, but I have advised him
15 that is a possibility, if he would refuse to testify
16 before the Securities and Exchange Commission, or any of
17 its representatives.

18 MR. RUBIN: Fine.

19 BY MR. RUBIN:

20 Q Mr. Rauch, to get back--

21 MR. PERLIS: Off the record.

22 (Discussion off the record.)

23 BY MR. RUBIN:

24 Q Mr. Rauch, how did Mr. McMahon come to you to
25 open an account?

3 A I met Mr. McMahan in the summer, I think
4 it was, of 1971. At which time--the account was not
5 opened yet.

6 I met him at--the first time I met--they
7 didn't ask me that. Excuse me.

8 Q How did you meet him?

9 A I went to Geon Industries--like I said,
10 I used to speak to Mr. Frank Bloom at the company, and I
11 started to have a position in Geon, as I testified
12 before.

13 I wanted to go out to see the company, to
14 see exactly the location, what they did, what kind
15 of operation it really was. I put through a call to
16 Mr. Bloom, I would think in the summer of 1971, in July
17 or August of 1971, at which time his secretary referred
18 me to this gentleman who was, I found out when I
19 got there, was Mr. Jim McMahan, or something. Anyway,
20 one morning I was at my dentist out on the Island, and
21 I called up Mr. McMahan at the company.

22 I asked, Can I come over now? And he
23 said, Fine.

24 At which time I did go over to the
25 company.

MR. PERLIS:

Q That is when you met--

A That is the first time I met Mr. McMahan.

BY MR. RUBIN:

Q Did he know you were a stock broker at that time?

A Yes, he did.

Q Did you solicit his business at that time?

A No, I did not.

Q How did he come to open an account with you?

A If I remember exactly, in the fall of 197--the fall of '71--I have to look at the--no, it was that summer of '71, the spring of or summer of 1972.

Q Approximately what was your position, you know, just off the record--off the top of your head, equity position in Geon, at that time?

A At that time, I would say I must have had maybe 20 or 25 or 30 thousand shares, somewhere in that area.

BY MR. PERLIS:

Q Between the time you first became aware of Geon, and the time that Mr. McMahan opened his account, had you any other contact with any other Geon officer, director or employee, other than Mr. Bloom or Mr. McMahan?

A Up until when??

Q Until Mr. McMahan opened his account.

A No. Aside from--

Q To the best of your recollection.

A I knew also Mr. George Newirth, but I don't know if it was the time in question that when I also knew him.

Q Let's go from then until February 22 of 1974, are those the only three employees, officers or directors of Geon with whom you had contact?

A Yes; right.

BY MR. RUBIN:

Q When Mr. McMahan opened his account did he purchase any securities in--

A In Geon?

Q Did he purchase any securities, initially, sir?

A Yes, sir; he purchased in June of 1972, two hundred shares of Optel, O-p-t-e-l?

Q Was that a margin or a cash account?

A Cash account.

Q Did it continue to be a cash account?

A Yes. To the best-- Yes.

Q When did the--when did McMahan make his first purchase in Geon?

A August of 1972.

Q Did Mr. McMahan open an account for Lewis Maione simultaneously with opening his own account.

A No. Mr. Maione's account was opened first.

Mr. Maione's account was opened first.

Q Was that also through Mr. McMahan?

A Yes.

BY MR. PERLIS:

Q Did you understand Mr. Maione's relationship to Mr. McMahan at that time?

A Yes.

BY MR. RUBIN:

Q Did they buy Geon shares approximately the same time?

A No. Mr. McMahan bought Geon in August of 1972.

Q How many shares?

A He bought 300 shares; at 18 5/8. Mr. Maione bought Geon on November 2, November 6 and November 9 of 1973.

BY MR. PERLIS:

Q How many shares?

A Six hundred shares.

Q Total?

A Right; correct.

BY MR. RUBIN:

Q Did there come a time that you had discussions with Mr. McMahan, about the proposed merger of Geon, with Burma Oil?

A Yes.

Q When did that occur?

A I would say sometime in the latter part
or--sometime in November of 1973. This past '73

Q Would it be contemporaneous with his
purchase for Lewis Maione?

A I would say it could have.

BY MR. PERLIS:

Q Was this prior to the public press release
of such notions?

A Yes.

BY MR. RUBIN:

Q When Mr. McMahan first requested--it was
your testimony that Mr. McMahan requested that he
not be listed as a Geon officer, rather than he be
listed--

A As he worked for Geon, period. He didn't
want anybody to know that he worked for a public company..

Q Was there any concern that not only that
he worked for a public company, but that he was buying
stock of a public company, and may have been privy to
inside information?

Did any conversation of that nature take
place?

A No.

1 Q Did he express why he did not want people
2 to know he worked for a public company?

3 A No.

4 Q Did it seem unusual to you?

5 A It then did, at the time, it did at the
6 time.

7 Q Do you know of anyone else who has done
8 that, in your experience as a rep.

9 A No.

10 Q Now--

11 A It was my first experience as having
12 somebody who worked for a public company. So you know it
13 was strange for me also.

14 Q Right.

15 Did you tell Mr. McHahan that you had a heavy
16 position, a fairly substantial position?

17 A Yes. He knew my name.. He knew who I was
18 through, because I used to speak to Frank Bloom all the
19 time.

20 BY MR. PERLIS:

21 Q Did you request him at that time to keep
22 you apprised of developments that might occur within
23 Geon, as far as they might affect your substantial
24 position in that company?

25 A No.

BY MR. RUBIN:

2 Q Did Mr. McMahan volunteer the information
3 concerning a proposed merger in November of 1973?

4 A Did he volunteer the information?

5 Q How did you come about discussing a proposed
6 merger?

7 A My father called me back in November of 1973.
8 My father called me to tell me that something's going on with
9 Geon. Do I know anything that is going on with Geon?

10 I says, "Why, what do you mean?"

11 He says, "There's something--I think
12 there's going to be a takeover of Geon."

13 BY MR. PERLIS:

14 Q Did you ask your father how he knew
15 that?

16 A Yes, sir; I asked my father, and heard it
17 from a broker.

18 Q Did he mention the name of the broker?

19 A Yes. The broker's name was Mr. Ben
20 Firkser..

21 Q Where did he work?

22 A Mr. Firkser worked for--

23 BY MR. RUBIN:

24 Q F-e-r-t-s-e-r?

25 A F-i-r-k-s-e-r, I think it is. He worked

1 at the time for John Kaplan. And--

2 Q Did your father have any Geon shares at that
3 time?

4 A No. That is when he started to buy it.
5 And I called Mr. Firkser in to ask him, I said, you know,
6 "What do you hear on Geon?" This is already--Geon, at that
7 time, I am trying to remember, the stock was active
8 that day. The stock went up about two points. It made
9 a new high. It was up to around 14 3/4 and came down.
10 I am trying to--it was sometime in November or maybe
11 the end of October. And I called up Mr. Firkser because
12 I know him and I asked him "What do you know about Geon?"

13 He says, "I can't say."

14 And I said now--

15 Q Did he know you were--

16 A He knows my father. He is an elderly gentleman.
17 He is now retired down in Florida. This is when I called
18 up Mr. McMahan, and I asked him, I says, "Do you hear of
19 anything going on?"

20 He says, "Not a thing."

21 I says, "Where's everybody?"

22 He says, "Nobody's here." That's the end
23 of that.

24 Q Did you make any recommendations to anyone else
25 Edwards & Hanley at this time?

[30]

We have records that reflect that at this time
Phyllis Rosenfeld purchased in excess of 500 shares and--

A Phyllis? Must be Marty's wife.

Q Marty's wife. I guess that it's his account.

A Can I elaborate on this whole situation?

Q Why don't you go through and tell us in your
own words?

A I have had a tremendous position in Geon,
at this time. This is going into November.

Q Early November, would you say?

A Up until the time in question. Loeb, Rhoades
has put out reports on Geon. A friend of mine, also a
broker, calls me up--I am just trying to get the facts
together, to tell you how it--oh, a friend of mine is a broker,
and calls me up and says There is a report, a 30-page
report coming out from a brokerage house called Cowen &
Company. I have the report with me if anybody would like to
see it."

And I understood from my friend that this
fellow is very, very bullish on Geon. He is a bull like
I was.

And--of which I called up Mr. George
Neuwirth. I said "I understand Cowin & Company is coming
out with a report."

He says, "Yes; in fact I know he is."

1
2 Then I says--I asked him, "Do you know
3 who wrote the report, who the fellow at Cowin was?"

4 He said a fellow named Mark Boyer. I
5 called up Mark Boyer and I started to discuss the company
6 with him.

7 And here is a guy who knew more than I did.
8 I was impressed by it. And I asked him, "Can you please
9 send me the report?"

10 He says, "I have to send it to my clients
11 first, and then I will send you the report." In the meantime,
12 my other friend who knew Boyer, sent me a report, I
13 think it was a week before Boyer sent me his report, and
14 when I read that report, that made me bullish, you know,
15 more bullish on the company.

16 BY MR. RUBIN:

17 Q This is prior to the call to Firkser?

18 A Yes. This is all leading up to this. And
19 this is the time that the energy crisis, I think, was
20 starting to take an effect, and I called up George
21 Neuwirth.

22 These things I never called McMahan. I called
23 up George Neuwirth and I said, "George," I always called
24 him George, you know, "this energy crisis, how is this
25 going to affect you?"

He said, "I couldn't ask for anything better
since I am in the business. This will be the most bullish

1 thing for us. And I thought so, too, because everybody
2 would be going to small cars.

3 Now, they claim that the foreign car sales
4 started to level off a little bit. Not really, but they
5 leveled off at 18 or 17 percent.

6 So, now, with the energy crisis coming,
7 I am going back to my bullishness again that I was in 1970,
8 when I started recommending Geon, because the imports
9 were taking 16 percent, 18 percent, so I was back in the
10 cycle again.

11 And I asked him at the time, earnings,
12 everything was on target. It was a known fact the company
13 was growing between 15 to 20 percent a year in
14 earnings.

15 And it was common knowledge, because of the
16 business that they had. And that is--I think I went off
17 the track of what we were looking for originally.

18 BY MR. PERLIS:

19 Q We are looking for how you found out
20 about the merger, the acquisition by Burma?

21 A Until it was Burma?

22 BY MR. RUBIN:

23 Q About the proposed acquisition. What led to
24 your purchases in November?

25 A The Cowin report, and my conversation with Mr.

1 Neuwirth, and I would say that would--at the time, in
2 the beginning of November or the end of October.

3 Q When did you recall speaking to Mr. Firkser
4 about the possible merger that he couldn't tell you about?

5 A I remember it was October. I think it was
6 either the latter part of October.

7 Q So all of these things were contemporaneous
8 with the other? All of them occurred pretty much the same
9 time?

10 A Yes. Everything happened at once, more or
11 less.

12 Q Did Mr. McMahan confirm any of this to you,
13 other than that no one was around?

14 A He confirmed to me that there is a deal
15 cooking sometime in November, but he knew something was
16 happening, but didn't know what.

17 BY MR. PERLIS:"

18 Q Did he give you any more definite statement
19 as to what kind of a deal?

20 BY MR. RUBIN:

21 Q That is generically, like a merger, a big
22 acquisition, a bit--almost anything?

23 A I am just trying to think. There are so
24 many people I spoke to. Who comes first? This was after
25 the announcement already.

[34]

This was after December 3. But prior to
December 3--December 3, I think was a Monday. Do you--I
think it was a Monday. That Friday night prior--that
prior Friday night--

Q December 3 was a Monday?

A Right. That Friday night I come home, I
get a phone call, George Neuwirth on the phone. So I says
he is calling me. Called me home to tell me that Monday
morning, before the opening, there would be an announcement
that, he said, rumors have been going on. But there will
be an announcement Monday morning that we are having
negotiations with Burma Oil of England. That is when
I said, "My God, I can't say, you know, happened then."

And sure enough, Monday morning, before the
opening, the thing came out.

BY MR. PERLIS:

Q When you said Mr. Firkser said he cannot
say, did he say that with an English accent?

A Yes.

Q Unfortunately the record won't pick that
up.

A Yes.

BY MR. RUBIN:

Q Did you get back to Mr. Firkser on that
at all?

A No/

1 Q And had Mr. McMahan been the source of any
2 other, or any information prior to lets say December
3 3, 1973, concerning the merger or anything on the fire,
4 anything that might be considered to be material
5 information?

6 A No. Not that I-- No. But the information
7 that I--you want me to--

8 Q You mentioned the purchases, you know, in the
9 beginning of November. Sort of contemporaneous with your
10 knowledge of a merger, which was not announced until
11 December.

12 A Correct.

13 Q Did you have any knowledge in early
14 November, such as Mr. Firkser's phone call, that
15 something was happening?

16 A Yes.

17 MR. ZELERMYER: Can you read back the
18 last question, please?

19 (Record read.)

20 THE WITNESS: You mean besides Mr. Firkser
21 and my father?

22 BY MR. PERLIS:

23 Q Right.

24 A Nothing. Mr. McMahan, he felt something
25 was happening, but he didn't know what.

1 BY MR. RUBIN:

2 Q It was then he felt something was happening?

3 A Right. Somewhere in November.

4 BY MR. PERLIS:

5 Q But it was Mr. Neuwirth who first provided
6 you the information that Burma Oil was in fact negotiating
7 to acquire Geon?

8 A Right.

9 Q And that was the--the Friday before December
10 3rd?

11 A Right.

12 BY MR. RUBIN:

13 Q After the close of the market?

14 A After the close, yes.

15 BY MR. PERLIS:

16 Q What did you do in response to that
17 information?

18 A In what respect?

19 Q Did you purchase any more securities for
20 yourself or for your customers accounts in Geon?

21 A After December 5?

22 Q Right. Like, first thing Monday morning,
23 did you go in and buy up more Geon?

24 A No. No.

25 BY MR. RUBIN:

Q As of February--

1 A Explain. The news came out and it said that
2 Geon was having negotiations with Burma Oi. in a price
3 excessively higher than the current market price. And that
4 is when the stock opened up, not that much higher. The
5 stock opened up, I think it was, closed 11 3/8, something
6 like that, before it opened up at 12 1/2, I think it
7 was.

8 BY MR. PERLIS:

9 Q Did you inform anyone else at Edwards & Hanley
10 of this information?

11 A No.

12 BY MR. RUBIN:

13 Q Mr. Rosenfeld was not aware of that you
14 were buying and that you had you know, what may be considered
15 certain bullish indications in early November, from
16 Firkser, or from your father, or from the Cowin
17 report?

18 A Yes. I was a bull on Geon from the day I
19 walked in to the office.

20 Q I know that. But apparently Mr. Rosenfeld
21 was buying contemporaneous with your purchases, and that he
22 is buying for his own account.

23 A He bought it at the same time?

24 Q He is buying in November 2, and November
25 5 of 1973?

1 A Yes.

2 Q This is sort of contemporaneous with your
3 statements about--

4 A I know I got the Cowin report and I gave it
5 to Mr. Rosenfeld, and a couple of the other guys in the
6 office to look at it.

7 Q Did you ever discuss with Mr. Rosenfeld
8 that you had a customer who was a Genn employee?

9 A No.

10 Q Is there any reason you did not discuss that
11 with him?

12 A I never discussed anybody that I had an employee
13 with Geon Industrids.

14 Q Okay.

15 A Just like he--

16 Q You are bullish in the stock, you have a heavy
17 position in the stock, and one of your customers is a Geon
18 employee.

19 Is it less than a routine relationship,
20 let's say?

21 A Can I express my feelings?

22 Q Yes.

23 A At this particular time, I was, in that time,
24 I was more or less, O h, I forgot what I was going to
25 say, he was an employee. I didn't feel he was an employee

1 to any great substance, if you--you know, as far as he
2 wasn't a director, or he wasn't in on board meetings,
3 or he wasn't in on any kind of influence.

4 BY MR. PERLIS:

5 Q You thought of him as a lower level employee,
6 sir?

7 A Right.

8 BY MR. RUBIN:

9 Q Was he buying and selling Geon, or
10 was he mostly buying and retaining?

11 A He bought it in 1972, and he held it, then
12 he sold some in January of 1974. And--

13 Q Did he buy any more at '74?

14 A No.

15 Q Approximately how many did he sell?

16 A He had three hundred shares originally, which
17 he bought in August of 1972. Then he bought another hundred
18 in March of '73, 73. Then he bought another hundred in
19 October of '73.

20 Q End of October?

21 A October 22, I see here. and he sold
22 a hundred on January 8, 1974, at 13 1/8.

23 Q Between the time of the December, I guess
24 it would be November 30, when would that be, the Friday,
25 Friday, November 30 conversations you had with Mr. Neuwirth,

1 and February 22, 1974, let's make that February 21st of
2 1974, did you have any other conversations with any Geon
3 officers, directors or employees regarding Geon?

4 A Yes. Mr. George Neuwirth.

5 Q But not Mr. McMahan?

6 A I spoke to Mr. McMahan, but he didn't really know
7 from our conversations what was going on.

8 Q What did Mr. Neuwirth tell you?

9 A Mr. Neuwirth--hte key was, we are going now from
10 December to February, right?

11 Q Correct.

12 A I used to call Mr. Neuwirth every week
13 to say, George, how is everything going, and he would say,
14 Marvin, everything is great. There was an article on
15 February the 3rd, that appeared in the New York Times-- Do
16 you have it with you?

17 MR. ZELERNYER: Yes.

18 BY MR. ZELERNYER:

19 Q If you can just go on.

20 A Right. There was an article in the
21 New York Times, which more or less quoted that the deal
22 was completed. February 10.

23 BY MR. PERLIS:

24 Q You refreshed your recollection now by looking
25 at the copy of the article?

A I don't need the article.

1 BY MR. RUB IN:

2 Q Just for the date, that is all?

3 A The date. The February 10 article. I called
4 Mr. Neuwirth home, and I says, "George, according to this
5 article, the deal's completed, where is your money?"

6 He said to me, Marvin, all I can tell you
7 is tht there are no problems, no hurdles, we are acting
8 like we are a subsidiary of Geon."

9 I says, "How can"--

10 Q A subsidiary of Burma?

11 A "A subsidiary of Burma?. A subsidiary of Burma."

12 I said, "Where is our checks?" I said, "How
13 can the paper say that?"

14 He says, "Because we are a family already."
15 This was on February 10. And he said to me there are no
16 problems, no hurdles. All the major problems were ironed
17 out, and there is nothing in front of us to hurt us, and he
18 said, the auditors are in, and we expect to sign before
19 the auditors are finished.

20 BY MR. RUBIN:

21 Q Did he give you a date, outside date, as
22 a guess?

23 A Approximately--there was a conversation before.
24 He gave me a date of, I think it might have been ten days,
25 two days--two weeks, or two to three weeks.

"This was a photograph of an exhibit that was marked for
identification, but was not received into evidence."

1 BY MR. PERLIS: .

2 Q From February 10?

3 A No. This is a conversation I had the
4 week prior. I am just trying--the way--the conversations
5 I had, it was if--that they were going to sign the 20--
6 either the 21 or 22 of February.

7 BY MR. RUBIN:

8 Q Did he indicate there was to be a meeting, the fo
9 mal signing would be at?

10 A No.

11 BY MR. PERLIS:

12 Q Between December 3 and February 22, did you at
13 any time increase your position in Geon?

14 A Between December 3 and December--

15 Q February 22 of 1974.

16 A Oh, yes.

17 Q How many shares additional did you, did
18 you purchase, approximately?

19 A From December 3 on?

20 Q Yes.

21 A December 3?

22 BY MR. RUBIN:

23 Q I understand you purchased a thousand shares
24 on February--

25 A That is the 19th. I spoke to Mr.
Neuwirth that day.

1 I bought a thousand shares for myself on
2 February 19th. You are clocking me between December 3rd--
3 BY MR. PERLIS:

4 Q And February 22?

5 A And February 22. Maybe I bought, maybe two
6 thousand, 2500, maybe, from that time.

7 BY MR. R. BIN:

8 Q Did you make any material dispositions during
9 that period?

10 A Yes. I sold 2000 shares for a Mr. Mazlow
11 on February 3, 1974.

12 BY MR. PERLIS:

13 Q Was that a solicited or unsolicited sale?

14 A Unsolicited sale, 2000 shares at 14 1/2.

15 Q Now were you aware of a memorandum from
16 Edwards & Hanley, concerning the holdings by Edwards &
17 Hanley in Geon? I think it came out in November, or
18 approximately November.

19 A There was a period of time there where Mr.
20 Rosenfeld told me, I can't buy Geon on margin. And
21 at which time I was furious.

22 I remember at the time because here I was
23 a bull, and you are like trying to tell the bull and lock
24 him up.

25 Q Did you express to him your confidence in

1 Geon at that time?

2 A Yes.

3 Q Did you express to him at all your source
4 of that confidence?

5 A No.

6 BY MR. RUBIN:

7 Q Was that contemporaneous with any margin
8 calls on Geon?

9 A No.

10 Q Have you ever had any margin calls on Geon?

11 A Yes. When I was at Phillips, Appell and the
12 stock was \$6.

13 Q Recently?

14 A No. I have not had it but this week--

15 Q Obviously the 22nd, but prior to that
16 time?

17 A No.

18 BY MR. PERLIS:

19 Q You also testified on February 19 you purchased
20 an additional thousand shares, and that was a result of a
21 conversation that you had with George Neuwirth prior to that
22 purchase.

23 A Nothing out of the ordinary. I just spoke to
24 George, and George, "How's everything look?"

25 "Great."

[45]

1 And then I started to think to myself, I
2 says, "Here, if I could buy it at 14 3/4, because when they
3 lowered the margin requirements from 65 to 60 percent,
4 I had buying power.

5 So I started to think, I says, "If I can
6 buy a thousand shares at 14 3/4, which would be \$15 net,
7 and I would exchange the stock, or tender, I don't know
8 what kind of deal this was, for 16.80, I would make \$1800."

9 I said, "My God, I can get my kids to camp this
10 summer. I thought it was a sure thing. Like an
11 absolutely sure thing.

12 I am not a trader, I buy and I sit.

13 BY MR. RUBIN:

14 Q Did you consider that to be nonpublic information
15 or public information, when Mr. Neuwirth was saying it
16 is a sure thing, there's no hurdles, there's no problems?

17 A I felt that he was telling me in a sense
18 that he knew I am a large holder of Geon. I think he
19 just wanted to--

20 (Witness and his counsel confer.)

21 A (Continuing) No. As far as telling me
22 something that nobody else knew?

23 BY MR. RUBIN:

24 Q Obviously the company knew and Burma
25 knew. but the average investor on the Street new or didn't

1 know?

2 Did you feel this was sort of like a scoop,
3 you got the inside track?

4 A No. No, because I spoke to different
5 brokers, you know, about--the stock itself was telling you it
6 a good deal.

7 In other words, any layman or any==

8 BY MR. PERLIS:

9 Q Qside from the market price of the stock, did
10 you believe that the general investor would have known
11 that the deal was going through smoothly?

12 A Yes. Absolutely.

13 Q Solely based on the price of the stock?

14 A No. The articles that appeared in the paper there
15 was two articles, once in the Times and once in Barron's.

16 Q On the 10th?

17 A Prior to the 10th. There was an article in
18 Barron's where it sayd Burma plunged down a half a billion
19 dollars for Geon Industries and Signal Oil.

20 BY MR. RUBIN:

21 Q Were you in contact with McIlahan during the
22 month of February 1974?

23 A Yes.

24 Q On a frequent basis?

25 A Frequent?

[47]

1 Q Rather than characterize, what were your
2 conversations?

3 A Yes?

4 Q Were you calling him to find out about the
5 merger or was he calling you to find out about the stock
6 or both?

7 A No. I was calling him--I was going to know
8 if there was going to be a solicitation fee on this deal.
9 If it was going to be a tender offer. And nobody knew. And
10 I thought maybe he knew, and that was-- In other words,
11 I had a stake here, I have a large position, I was thinking
12 "Oh, my God, if there is a solicitation fee, it would be
13 the biggest break that I ever had in my life." And he
14 didn't know.

15 BY MR. PERLIS:

16 Q Did you speak to Mr. Bloom at all?

17 A No.

18 Q In this regard?

19 A No.

20 Q Aside from your initial contacts with Mr.
21 Bloom--

22 A In fact, I even asked Mr. Neuwirth that
23 question. He didn't know.

24 BY MR. RUBIN:

25 Q He didn't know what?

1 A I said, "What kind of deal is this?" I says,
2 "Is this a tender offer, a takeover?" I didn't know the
3 difference myself.

4 I said, "Is this a solicitation fee on
5 this thing?"

6 He said, "I don't know."

7 Q Can you describe in your own words what happened
8 on February 21st?

9 A Want to go after the close?

10 Q Eell, --

11 A I get a phone call around one o'clock in the
12 morning, 1:30 in the morning, I don't remember the exact
13 time.

14 I was fast asleep. The phone rings. It is
15 Mr. McMahan. He says to me, "Sell my stock," meaning
16 McMahan, "Sell my father-in-law's stock, and go to sleep."

17 BY MR. PERLIS:

18 Q Nothing further?

19 A "And go to sleep."

20 BY MR. RUBIN:

21 Q He told you that?

22 A And go to sleep.

23 Q Did he expect you to execute the sales
24 at night?

25 A Let me continue. "Go to sleep," and he
hangs up. "Go to sleep."

1 All of sudden I wake up. I says to my
2 wife, "What did he say?" Then I started to get nervous.
3 And I started to think, what happen s, God, now, if the
4 deal is off?

5 I am thinking of all my people. I finally
6 fell asleep after a couple of hours of--I didn't want--I
7 don't want to tell you the tension I had here. I call him
8 back in the morning at 7:30. I said to him, I called
9 him Jim, I says, "Jim, did you call me or did I have a
10 dream?"

11 "No," he says, "I called you."

12 "Thanks. What did you say to me?"

13 He said, "Sell my stock, and I want you to
14 sell my stock and sell Maione's stock."

15 I said, "What's wrong?" He said, "Something
16 is screwy with the numbers."

17 I said, "What do you mean, something's screwy
18 with the numbers?"

19 I am trying to think the conversation. Oh,
20 we are going to have to work all week end to see what is
21 is, or I will be working with somebody or--we are all going
22 to be working--have to work all weekend to see what it is.

23 I says the deal off?

24 He says, "No, not that I know of." And I
25 think it was a three minute conversation that morning.

1 I just had to call him up to say, "Did
2 you call me or you did not call me?"

3 And that was all that I--the conversation. That
4 is what happened, the 21st. And the 22nd.

5 Q Were you concerned that you might have
6 been in possession of material inside or nonpublic information
7 and--

8 A I am just trying to think. I am just trying
9 to--were you-- Can you repeat that question?

10 Q Were you aware that you might have been in
11 possession of material nonpublic information?

12 A Yes. I would say I-- Yes, I think so, yes.

13 Q Is that what contributed to your distress and a
14 ure to get back to sleep right away?

15 A No, not at all. No. I was thinking what
16 happens if the deal is off.

17 See, originally, from information from talking
18 to Geroqe, numbers had nothing to do with this deal. In other
19 words, Burma was not buying. This was from my opinion and
20 the Street's opinion. Burma was not buying Geon for the
21 numbers. They were buying Geon for the stores, because they
22 had a Castrol product, which is a highly recommended
23 motor oil for foreign cars.

24 For me to see that Burma is-- This is perfect,
25 because they have 110 or 120 stores automatically set

1 up, and they can never dl it for \$36 million. So, at the
2 time, I--earnings, as far as I knew, had anything to
3 do with this deal.

4 BY MR. PERLIS:

5 Q Aside from Mr. McMahan that -- on that
6 conversatinn on the 21st and the 22nd, and the other
7 conversations that you have testified to, that occurred
8 previously, did you speak with any other officers, directors,
9 or employees, specifically for example, Mr. Bloom,,
10 regarding the acquisition by Burma, or the possibility
11 of its successful completion?

12 A I didn't, but I called the--I think I--I
13 called Mr. Boyer, Mark Boyer, and I think it was that week,
14 and it was either, yes, I think it was Mr. Boyer, because
15 I knew he must have an interest-- Yes, I was talking
16 to him that week and I says, "Well, how does this-- How
17 does this deal look to you?"

18 He says to me, "It looks like it is in the
19 bag."

20 I says, "Why isn't the stock going any
21 higher?" This is when it was 14 3/4. Ane he said, -- so
22 I said to him, "This sotck is a buy. I think I will buy
23 some. I think I am going to buy some stock." I think
24 this is on the 19th.

25 I said, "Have you spoken to anybody there?"

He says, "Yes, I spoke to Mr. Bloom, Frank

1 Bloom."

2 What did-- I said, "What did he say?"

3 No, just routine, that they will be signing
4 shortly, something to that effect.

5 I said, "How does the deal look to you at
6 the time?"

7 And it was just routine. Nothing out of the
8 ordinary of--now I am pretty sure it was Mark Boyer
9 or, I am trying to think who else did I speak to. I
10 also spoke to a Dick Madson who works at Herzfeld, Stern.
11 He was originally a trader in Geon, when they first went
12 public. He worked for Newberger, Loeb. He is out of
13 Geon, he told me, but I don't know. I called him for
14 something.

15 And I think maybe him, he said he spoke to
16 Frank Bloom. I don't know which guy it was. I know I
17 spoke to a couple of brokers who always called the
18 company, who I in turn--

19 BY MR. RUBIN:

20 Q Did Edwards & Hanley have any policy about
21 utilization of material nonpublic information?

22 A I imagine they did.

23 Q Do you know what the policy was?

24 A Offhand, not really.

25 Q Did they ever inform you, as a general rule,

[53]

1 either by providing you with the firm rules, or the
2 Exchange rules, or SEC rules, the inside information--that--
3 about regulations concerning the use of material nonpublic
4 information?

5 Or what you must do when you are--well, when
6 you observe--when you obtain such information?

7 Are you aware of the general rules and
8 regulations concerning the use of material public
9 information--excuse me, non-public information?

10 A I--

11 Q When executing your purchases and sales
12 of securities?

13 A I would say yes. I think my original
14 guidelines as a broker.

15 Q When you received the call from McMahan, both
16 late at night and then when you confirmed the
17 news about the bad numbers the next morning, did you
18 consider that you had been privy to material nonpublic
19 information?

20 A I would say yes.

21 Q Did you consider discussing this, in fact, did
22 you discuss this with your compliance man at Edwards &
23 Hanley, or with the resident partner or with anyone
24 else there?

25 A No.

"This was an exhibit that was marked for
identification, but was not received into evidence."

[54]

1 Q Is there any reason why you did not?

2 A Any reason why I did not? I didn't think it
3 was their business. I don't--

4 Q Were you aware that Mr. Rosenfeld had a
5 position in Geon, that Mr. Lynn had a position in Geon,
6 both for their own accounts and customers' accounts?
7 Mr. Leopold had a small position in Geon?

8 A Was I aware of it? No. I was aware of the--
9 some of the fellows had stock. I was aware Rosenfeld
10 had stock and sold it.

11 Q Sold some?

12 A I didn't know he had--any left?

13 Q Yes.

14 A I really don't know that.

15 BY MR. PERLIS:

16 Q Did you make any attempt to ascertain whether
17 or not anybody still held Geon stock on February 22nd?

18 A No.

19 BY MR. RUBIN:

20 Q Were you aware that-- Did you turn around
21 and ask Mr. Lynn what an imbalance was?

22 A Yes. There was a discussion, because we
23 got a size and it was--we asked for a size. Tapes were
24 out that morning, and the machines quoted the stock 14 3/4, 15.
25 The stock closed at 14 7/8 on Thursday. Based on that close,

1 the stock should have opened up 15 and I thought maybe
2 the stock should open up at 16, because maybe what George
3 told me they signed, and maybe--this is all going through
4 my head. The phone call, I forget about it at the moment,
5 what he called me.

6 We were having a discussion. Mr. Rosenfeld
7 says, imbalance is up, and I said, "I agree with you."

8 Mr. Lynn said, "Imbalance is down."

9 And then we get size comes back, 14 1/4,
10 three-quarters.

11 Q Hadn't you already placed your order to sell
12 approximately 1500 shares b e f o r e the opening?

13 A It was 1500 shares. I put 1500 shares in
14 before the opening.

15 Q Who was the 1500 for?

16 A Six hundred shares were for Mr. Maione, 400 shares
17 for Mr. McMahon and 500 shares for Blum.

18 Q Who is Blum?

19 A Dr. Blum is a customer of mine. I have
20 two accounts. One for the doctor and one for his wife.

21 Q Are they friends with your parents at
22 all?

23 A Yes.

24 BY MR. PERLIS:

25 Q Was that solicited or unsolicited for the

1 Blums?

2 A Did he call me directly? Can I read into--I
3 spoke to Dr. Blum on Thursday, where he said to me, maybe,
4 you know, it is two points, maybe we should lighten
5 up. And--because he had 3700- shares of stock. And he
y 6 owned some stock at nine dollars, when I averaged him
7 out.

8 It was like Quinn's Den tal that I put
9 500 into-- No, he did nt call me directly and say, sell,
10 that day.

11 BY MR. RUBIN:

12 Q Did you have discretion?

13 MR. ZELERMYER: Let him finish his answer
14 first.

15 A I had--no, no discretion.

16 BY MR. PERLIS:

17 Q Did you have discretion from Mr. Maione's
18 account?

19 A No.

20 Q Did Mr. Maione himself indicate to you that
21 you should sell that stock?

22 A No.

23 BY MR. RUBIN:

24 Q When did you put in the order to sell a thousand
25 shares for your mother?

A I didn't sell a thousand shares for my mother.

1 Q I thought you sold a thousand shares for Rosalyn
2 Rauch at 14?

3 A No. 500 shares for Rosalyn Rauch.

4 I sold--I told Al--

5 Q 500 for Rosalyn Blum and 500 for
6 Rosalyn Rauch?

7 A Correct.

8 Q Perhaps 500 many Rosalyns?

9 A Right

10 BY MR. PERLIS:

11 Q Was that also a sale that you submitted
12 prior to the opening of the market?

13 A No.

14 Q Okay.

15 A I had 1500 shares to sell at the opening.
16 Then I was on the phone, and that is when I was on the
17 phone with, excuse me, my father at the time, when the
18 stock opened, and--

19 BY MR. RUBIN:

20 Q When the market opened, or when Geon opened?

21 A When Geon opened. When Geon opened. I usually
22 speak to him after 10:30 and I was on the phone a lot
23 on that particular morning.

24 What are you supposed to bring out? I am
25 trying to think now.

1 MR. ZELENMYER: I don't think there
2 is a question.

3 BY MR. RUBIN:

4 Q When did you decide to dispose of additional
5 shares on your own behalf, on behalf of family and
6 friends?

7 A Now--

8 Q I understand orders were placed for Herb
9 Eide.

10 A Right.

11 Q Then Beverly Rauch. That is your wife?

12 A Yes.

13 Q Don Spanton?

14 A Don Spanton called me when the stock was
15 trading and told me to sell 300 shares. Dr. Verschell called
16 me to sell 300 shares.

17 Q Had you given any consideration to selling
18 shares on your own behalf, after you had gotten the news
19 from--

20 A I wasn't going to sell.

21 Q -- Mc Mahan?

22 A I wasn't going to sell. Can I lead what
23 happened to that?

24 Q Yes.

25 A After the stock opened, stock opened at 14 3/8.

1 It was a quarter a half. And then the
2 tape started to work or something. The stock started
3 to come down. I get a call from this Ivan Boski, I never
4 met the gentleman, he works for the Arbitration Department
5 in Edwards & Hanley.

6 Can I lead up--

7 MR. ZELERMYER: Off the record?

8 MR. RUBIN: Off the record.

9 (Discussion off the record.)

10 (Continued on page 60.)

1d

MR. RUBIN: Back on the record.

A Can we start from the opening?

I had the 1500 shares in to sell at the market,
on the opening.

Stock openings.

I am on the phone. Mr. Rosenfeld, I think,
was standing behind me on Mr. Lynn's phone, or on his
phone. He has a phone right behind there.

I heard him call up the New York order room
to sell 800 shares.

I says Marty, make it 2,000 to sell.

I gave him at the -- I says make the order
2,000.

Q (By Mr. Rubin) That is in addition to the
1500?

A Correct. 2,000 shares.

500 for my father, five-- three hundred for
Dr. Vishel, 100 shares for Mrs. Feingold, who called
me, 110 shares for Miss Apprahamian, and 200 shares for
Eide.

Q Is Eide a relative?

A Eide is a brother-in-law of mine.

Is that 1200? That is 1200 shares.

Now, how I had these orders, can I --

Q Do it.

2d

1 A I was on the phone with Hide, because he
2 is buying another stock in particular.

3 He wanted to buy 1500 shares of Computer
4 Design. A limit of about four and three quarters. That
5 came to \$7500.

6 So I was on the phone with him, and I says
7 maybe you want to seel Geon, because he bought Geon,
8 he has high prices, low prices.

9 I says you want to sell Geon.

10 Now, I honestly do not remember if he told
11 me to sell the 500 there and then, or to use my discretion.

12 I do not remember that.

13 Q Was this prior to the opening of Geon?

14 A No, this is after the opening. I spoke
15 to nobody before the opening, as far as a customer or
16 anybody is --

17 I had the order in, and I went about my
18 business.

19 I was on the phone with other customers,
20 doing other transactions.

21 Then Ivan Boski calls me up, and he starts
22 yelling at me.

23 He says what kind of outfit are you guys?
24 He says you guys are selling stock, and while I am down
25 there buying, you are -- you should be seeling stock.

3d

1 I says Ivan, what do you want from me? I
2 said talk to Marty. I am busy on the phone.

3 He says I want stock. Get out of your stock,
4 I want to buy stock.

5 I remember hesitating for a minute, and
6 he says give me some stock. What are you in there for.
7 The stock is going down. What are you hanging in there
8 for?

9 I am trying to recollect this conversation.

10 He actually forced me, when I say mentally
11 forced me, I says here, take five thousand shares, just
12 like that.

13 From that conversation, I was under the
14 impression he would have taken 50,000 shares, this guy.
15 He has that kind of voice.

16 I says here, take 5,000, take 5,000 shares.

17 And that was that.

18 That is when -- Yes. I had a customer sitting
19 with me at the time, Mr. Eddie Kaufman, who was sitting
20 at my desk.

21 I said to him, Ed, the stock is down. Do you
22 want to lighten up on any stock?

23 And he said no.

24 I choked and I gave myself, or my wife, the
25 4400 shares, the 300 shares, Spanton called me, when I was

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1 in the phone with Ivan, and the balance of Eide's order.

2 BY MR. PERLIS:

3 Q Did any other registered representatives
4 call you on February 22nd to find out what was happening.
5 with Geon?

6 A I think so. I think, I would say so.

7 Q Did you tell them?

8 A I am just wondering what time of the day it
9 was.

10 Did anybody -- I do not know. I do not know,
11 I said. I remember that. I said I did not know.

12 BY MR. RUBIN:

13 Q Was there anyone you discussed the information
14 McMahan had given you with?

15 A No, nobody.

16 And I remember calling Mr. Boski back in the
17 afternoon, because he was pretty well, he was smart on
18 this whole deal, and --

19 Here is where the stock already closed eleven
20 and seven eighths.

21 I asked him what do you think?

22 He says well, go home, relax. There will be
23 a deal. I think the deal will be at a lower price. I
24 think there is something wrong with their numbers.

25 But go home, relax, come in Monday morning.

5d

1 I think the stock will open. And I want to
2 take away all your stock, because you have no right to
3 be in the stock as a retail man.

4 I left. I felt good. I says this is what
5 I am going to do. Go home, we come back Monday, and
6 give him the rest of my stock.

7 Q Did you have any discussions with McMahan
8 about how either of you could explain the respective
9 sales?

10 A Yes.

11 Q Can you state that quickly, in your own
12 words?

13 A Yes.

14 I spoke to Mr. McMahan. I said in case there
15 is an investigation, this is before I knew there was an
16 investigation --

17 No. I said in case anybody asks you if you
18 sold your stock, I says tell him you did, because the
19 stock is in your name.

20 I says do not tell anybody you did not sell
21 it, when the stock is in your name.

22 He says well, what happens if they ask me
23 where I sold it? Or something to that effect. Or how
24 I sold it or why I sold it.

25 I am just trying to recollect that first

1 conversation:

2 I says well, suppose -- suppose they ask you
3 where you sold it?

4 I says well, I used my father-in-law's
5 broker. I says well, let's --

6 I feel you have to call me, I says, part of
7 when you take an order you are supposed to confirm it.

8 He says then let Maione -- Maione called you
9 and I would -- then I told him, and you better say you
10 called me back to confirm the order. To that nature.

11 I said all right, if anybody asks me, then
12 I will say that your father-in-law called me, and you
13 confirmed the sale.

14 Q Can you describe the time of the supposed
15 call?

16 A When I spoke to him about that?

17 Q Let's not say it was 1:30 in the morning.

18 A No. No. This was -- I called him before
19 I went down -- when I knew I had to come to the Exchange,
20 I called him.

21 BY MR. PERLIS:

22 Q Is this last Tuesday or Wednesday?

23 A Right. When I called him. I said I think
24 I have to -- because -- Can I express any feeling? "

25 MR. ZELLMYER: What?

7d

1 A I was going to say, I did not want to put
2 him in trouble like.

3 In other words, I had the impression, I did
4 not want to put him in trouble, or, you know, to that.

5 I do not want to see the poor kid hurt. He
6 was a nice guy, and at the whole time, I might sound
7 dumb, but I did not think it was such a big thing at
8 the time when thiswhole thing started.

9 In my head, I was trying to protect this
10 guy. This is what I was trying to do, in case.

11 This is, now I realize what the whole thing.

12 MR. RUBIN:

13 Q Were you concerned that with the -- when
14 the open account card, the new account card for McMahan
15 was filled out incorrectly, that there was some violation
16 of the rules of Edwards and Hanley, or the exchange, or
17 the SAC, as to his employment?

18 A I was a little concerned, but that was his
19 wishes. That is what I did.

20 I thought of it at the time when I did it.
21 I says how can I do that?

22 He said --

23 MR. RUBIN: Let's go off the record.

24 (Discussion off the record.)

25 MR. RUBIN: On the record.

3d

1 Let's adjourn the record at 5:15.

2 Mr. Rauch, I am sure we would like to speak
3 to you further about this matter, and we will contact you
4 through your attorney.

5 If conceivable, we will continue this
6 evening with another reporter, and if now, are you
7 available tomorrow?

8 MR. ZELERMYER: Possibly in the afternoone.
9 Not in the morning.

10 MR. RUBIN: Will there be any hardship if you
11 are required to come to Washington, at your convenience?

12 MR. ZELERMYER: Are you going to pay for
13 the trip?

14 MR. RUBIN: I will pay for the witness's
15 trip.

16 Off the record.

17 (Discussion off the record.)

18 MR. RUBIN: Let's adjourn the record at 5:18.

19 (Whereupon, at 5:18 o'clock p.m., the
20 hearing was adjourned as above specified.)
21
22
23
24
25

Investigative Testimony - Rauch

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Securities and Exchange Commission

U. S. SECURITIES AND EXCHANGE COMMISSION

RECEIVED

FILE No. HC-695

MAR 14 1974

In the Matter of

GEON INDUSTRIES, INCORPORATED

Place Washington, D. C.

Date Thursday, March 7, 1974

Pages 1 - 97

CSA REPORTING COMPANY

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300 SEVENTH STREET, S.W.
WASHINGTON, D.C. 20024

TELEPHONE 393-3007

C E R T I F I C A T E

I hereby certify that this is the transcript
of the hearing held before the Securities and Exchange
Commission on March 7, 1974 in the matter of: Geon
Industries, Inc., and that this is a full and correct
transcript of the proceedings.

CSA REPORTING COMPANY

Gary Evans

C O N T E N T S

EXAMINATION OF:

PAGE:

MARSIN A. RAUCH.

6

EXHIBITS:

IDENTIFIED:

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~~Investigative~~ Testimony- Rauch

[2]

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

GEON INDUSTRIES, INCORPORATED

File No. HC-695

Securities and Exchange Commission
 500 N. Capitol
 Washington, D.C.
 March 7, 1974

The above-entitled Matter convened for investigation,
 pursuant to notice, at 1:00 p.m.

PRESENT:

On behalf of the S.E.C.:

RICHARD J. RUBIN, Esq.

MICHAEL McCONNIE, Esq.

W. MICHAEL DRAKE, Esq.

MICHAEL PERLIS

On behalf of the Witness:

BENJAMIN SPERMYER, Esq.

Morrison, Paul, Stillman & Beilev

110 East 59th Street

New York 10022

P R O C E E D I N G S

MR. McCONIH: Mr. Rauch, you have been asked to appear here today at the Securities and Exchange Commission in Washington in continuation of the testimony that was taken on Tuesday at the New York regional office.

I would like to advise you, as I believe you were advised at that time, that you have the right to be represented by counsel. Are you represented by counsel here today?

MR. RAUCH: Yes, I am.

MR. McCONIH: Would counsel identify himself for the record, please?

MR. ZELERNYER: Benjamin Zelernyer of the firm of Morrison, Paul, Stillman & Bailey, 110 East 59th Street, New York City.

MR. McCONIH: In addition, Mr. Rauch, I would like to advise you that any testimony you give during the course of today's session may be used against you in any proceeding, whether it be civil, criminal or administrative.

Furthermore, I would like to advise you that you may refuse to answer any questions posed to you or you may refuse to give any evidence that may tend to incriminate you or subject you to a fine, forfeiture of penalty. This right is granted to you by the Fifth Amendment to the Constitution of the United States.

Do you understand this?

[4]

MR. RAUCH: Yes.

MR. McCONIFF: Let the record reflect that at this point in time that prior to going on the record this afternoon we had a discussion with Mr. Rauch and his counsel. Mr. Drake and myself were present at the time, with respect to Mr. Rauch and his Fifth Amendment privilege against self-incrimination.

I understand at this point in time Mr. Rauch's counsel has a statement he would like to make for the record. Is that correct?

MR. ZELERNYER: Yes. As the record of Tuesday will reflect I have advised Mr. Rauch that his refusal to testify might possibly jeopardize his being able to earn a living in the securities industry.

With that advice Mr. Rauch has decided to comply with the subpoena. He has appeared on Tuesday and again here in Washington today and is prepared to testify.

MR. McCONIFF: With respect to that statement I would like to advise you, Mr. Rauch, that under the Fifth Amendment to the U.S. Constitution if I or anyone else this afternoon asks you any question which you believe may tend to incriminate you, subject you to a fine, a forfeiture or any other type of penalty you may decline to answer that question if you wish on the grounds of the Fifth Amendment to the U.S. Constitution.

[5]

1 In addition I would like to advise you with respect
2 to the advice your counsel has given you that the Securities
3 and Exchange Commission has never and does not disbar someone
4 or censure them or prohibit them from earning a living in
5 the securities industry based solely on an individual's
6 exercising his constitutional rights. That includes his
7 exercising his constitutional right not to provide incrimi-
8 nating evidence against himself.

9 Do you understand what I say to you?

10 MR. RAUCH: Yes.

11 MR. MCCONNIE: In other words, the fact that you
12 might elect to exercise your Fifth Amendment privilege
13 against self-incrimination will not be used by this agency
14 as the basis for excluding you from the securities industry
15 or acting as a broker-dealer.

16 Do you understand that?

17 MR. RAUCH: Yes.

18 MR. MCCONNIE: In light of your counsel's indica-
19 tion that you would like to proceed with the taking of your
20 testimony that's what we intend to do.

21 I would like to make it perfectly clear to you,
22 however, that by proceeding with the taking of your testimony
23 we do not adopt the advice that your counsel has given you
24 with respect to your Fifth Amendment privilege, nor do we
25 or can we give you any grant of immunity. Do you understand

[6]

that?

MR. RAUCH: Yes.

MR. MCCONNELL: Do you have any questions with respect to this whole question of your Fifth Amendment privilege, action that might be taken based upon your assertion of that privilege alone, any possible grant of immunity or any other question relating to those topics which you would like to ask me at this time.

MR. RAUCH: No.

MR. MCCONNELL: Also, I would like the record to reflect a comment I made earlier before we went on the record to the effect that certain of us here did not sit in on the taking of your testimony on Tuesday and I understand that there were certain time pressures at that time.

I state this in hopes that you will bear with us if we ask you certain questions that may be repetitive.

Whereupon,

MARVIN A. RAUCH

having been previously sworn, was examined and testified further as follows:

EXAMINATION

BY MR. MCCONNELL:

Q Can you list those people at Geon Industries whom you knew.

A Mr. George Newirth who was the chairman of the

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[7]

board and Mr. James McMahon, and I don't know his position.

Q Is there anyone else that you know that is employed by Geon?

A I spoke to Mr. Bloom several times.

Q Anyone else?

A That's all.

Q Those are the only three people that you know of that are employed by Geon.

A That's correct.

BY MR. DRAKE:

Q Did you testify that you don't know the position of Mr. McMahon?

A That's right. I know he's an accountant but I didn't know until the other thing that he was a controller or assistant at a subsidiary of Geon.

Q But you do know that he works in the accounting department.

A That's right.

BY MR. McCONINE:

Q Can you tell me how long you've known Mr. George Neuwirth?

A I met him at Geon's first annual meeting.

Q When was that?

A I would say that was April of 1970.

Q How long have you known Mr. McMahon?

[8]

A. I met him at the company some time in the summer or fall of 1971.

Q. What were you doing at the company?

A. I had a position at Geon.

Q. A stock position?

A. Yes. I had a stock position for customers or I was on the verge. I had stock. I was already interested in Geon at the time so I wanted to see their operation so I called Mr. McMahon and he told me to come over.

Q. How did you call Mr. McMahon? Had you known him before?

A. No.

Q. How did you call him?

A. I used to speak to Mr. Bloom at the company and one day Mr. Bloom turned my call over to Mr. McMahon. I was talking to him and told him I would to come out to see the company so he says when you're out in the area why don't you give me a call.

One particular day I was at my dentist who was way out on the Island near Geon and from there I called Mr. McMahon and says I'm in the area, can I come over and he said fine.

The exact time I don't know. I don't know if it was in the summer or after summer.

Q. But in any case it was the summer or fall of 1971.

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[9]

1 A. That's correct.

2 Q Can you develop a little bit your relationship
3 with Mr. McMahon from when you first met him in the fall of
4 1971 until now.

5 A. Yes. After meeting Mr. McMahon I spoke with him
6 a couple of times and then in the summer of 1972 I invited
7 him out to my club. I belong to a beach club out on the
8 Island. He came out with his children at that time.

9 After that I would say we've had dinner a couple
10 of times. I've had lunch with him a couple of times. I was
11 out to his house once. He had a mobil house that was being
12 shipped from a factory and I was very interested because I
13 grew with him at the time his house was coming and I was
14 very anxious to see how a prefabricated house came out.

15 Q How would you describe your relationship with Mr.
16 McMahon as of January, 1974. Were you pretty good friends?

17 A. I would say so.

18 Q Are you pretty good friends with Mr. Neuwirth?

19 A. I don't know --

20 Q Let me rephrase the question. How well do you know
21 Mr. Neuwirth?

22 A. I don't know his family. I know Mr. Neuwirth from
23 meeting with him and conversations with him.

24 Q How often would you say you would meet with or
25 converse with Mr. Neuwirth on a monthly basis?

[10]

1 A It was more in the last period of time. I had
2 lunch with Mr. Neuwirth frequently and I would say I've
3 spoken to him at least once a week minimum.

4 Q It was more recently. What do you mean by that?

5 A Ever since the announcement of the deal with
6 Burma Oil.

7 Q That would be in December, 1973?

8 A Right.

9 Q I had lunch with Mr. Neuwirth prior to that in
10 November. I would say I was speaking to him regularly since
11 the stock was around \$8.00 which is the reason I think it
12 was before the summer. There was a period where Geon went
13 down from 23 to 6¹/₂. It would be in '73 some time. I
14 would speak to him and always found him to be very honest
15 in his speech with me. I didn't feel he was leading me on.

16 Q What was your purpose in speaking with him? To
17 get information on Geon?

18 A Yes. I was a large holder of Geon.

19 Q When did you first learn of Burma Oil's interest
20 in Geon?

21 A I know there was a deal with Geon but I didn't
22 know it was with Burma Oil. Do you want me to start from
23 that point?

24 Q Yes.

25 A I would say it was anywhere from October through

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identification, but was not received into evidence."

[11]

1 November that I knew there was a deal or heard there was a
2 deal cooking with another company.

3 Q You might have learned in October there was some-
4 thing cooking?

5 A Maybe the end of October through November. I don't
6 know the exact time because there were so many things
7 happening at that particular time.

8 Q So many things with respect to Geon?

9 A Yes. I knew there was an institutional report
10 coming out on Geon by Coenen & Company. In fact I went to
11 see the analyst who wrote that report. New Neuwirth told
12 me they were working on the report at the company so I went
13 in to meet this analyst.

14 From meeting him I would say his thoughts on the
15 company were like mine. I was very bullish on the company.
16 I originally started to buy this stock in 1970

17 Q When did you meet with this man from Coenen &
18 Company?

19 A It would be before his report came out.

20 Q Was it in the summer of 1973?

21 A No. It was before October 17.

22 Q What was the date of the report?

23 A I remember October 17. I don't know when he sent
it out. I got a copy before he even sent me a report. I had
to see him in October or maybe the end of September.

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identification, but was not received into evidence."

[12]

Q At the time that report came out, which was October
17 --

A That's what the date of the report is.

Q Okay. It may come out a day either way.

A Right. Say the report came out in October.

Q Let's say around the middle of October.

A When I received my copy. I don't know whether he
sent it out to his clients. He told me I would get it after
he sent it to his clients because his customers get the
report first.

Q At the time you received the report did you know
at that time that Geon had something cooking?

A No. Not at all.

Q When did you first learn -- strike that.

From whom did you first learn that something was
cooking with respect to an acquisition by Geon?

A From my father.

Q Where did he learn that from, do you know?

A My father has a lot of friends on Wall Street. A
lot of brokers.

Q What is your father's name?

A Jules Rauch.

Q The question was where did your father learn this
from?

A He learned it from a gentleman by the name of Ben

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identification, but was not received into evidence."

Firkser.

Q Is he a broker in New York?

A I don't know now but he was working for John Kaplan.

Q Do you recall what it was that your father told you at that time?

A My father said to me what do you know about Geon? I says nothing really, why? He says I hear there's going to be a deal with Geon. Or somebody might acquire Geon. I asked him how do you know? He says this particular person bought maybe 6,000 or 7,000 shares of stock at the time --

Q Are you referring to Mr. Firkser?

A This gentlemen bought from Mr. Firkser. Somebody bought 7,000 shares of stock of Geon. He had as much right buying that much stock as you have buying one share.

Q It was not a big investment for him? Is that what you're saying?

A It was a tremendous investment for him. Maybe my expression is wrong. In other words, this particular guy must have over-extended himself.

Q Okay. Did your father own any stock in Geon at the time he was telling you this?

A No.

Q Do you recall what your position was in Geon at the time?

A Large.

Q 50,000 or 60,000 shares?

A I would say around there.

Q Your personal position?

A Oh, no. My holdings for my customers.

Q My next question is how much did you personally own?

A I owned 2,300 shares at that time.

Q That was shares in which you had a beneficial interest yourself.

A That's correct.

Q What accounts were those held in?

A My wife's account, Beverly Rauch.

Q Any other accounts in which shares were held?

A My son. Seven shares for Scott Rauch. Beverly Rauch as custodian for Scott Rauch.

Q What time are we talking about here?

A End of October.

Q There were some shares in your wife's account and your son's account to the total of 2,300.

A Yes. 2,207.

Q And this was at the end of October, 1973.

Q When your father told you that something was cooking with respect to Geon what was the next thing you did in respect to finding out more about Geon?

A I called up Mr. Hollahan. I told him I heard there

1 was something going on with Geon. Did you hear anything?

2 He says I don't know. Nobody's here.

3 Q What happened after that?

4 A After that I got the Coenen report.

5 BY MR. PERLIS:

6 Q Did you call Mr. Firkser?

7 A Yes.

8 Q Was that prior to calling Mr. McMahon?

9 A Yes.

10 Q Would you relate the substance of that conversa-
11 tion?

12 A I called up Mr. Firkser and says I understand
13 you bought some Geon. I said to him who told you to buy
14 the stock and where did you get it from? His answer to me
15 was I can't say.

16 Q Let the record reflect that the witness has
17 answered in a British accent.

18 A That's correct.

19 Q Mr. Firkser isn't British, is he?

20 A No.

21 BY MR. DRANE:

22 Q Did you know Mr. Firkser prior to that time?

23 A Yes. I've known him for a long time.

24 Q Why was it significant to you that he answered in
25 a British accent?

[16]

1 A. Why do I feel -- .

2 Q. Why at that time do you feel it was significant
3 to you that he answered in a British accent?

4 A. Because when it came out that it was Eurnan Oil --
5 British.

6 Q. At that time was it significant that he answered
7 that way?

8 A. I thought it was a foreign concern.

9 Q. Is this what he was telling you?

10 A. I thought it was foreign people buying.

11 Q. I thought all you know this was when you first
12 learned there were negotiations going on. We're talking
13 about November --

14 A. We're talking about October.

15 Q. All right. What did you know before you called
16 Mr. Firkser?

17 A. Nothing.

18 BY MR. RUBIN:

19 Q. What do you think he meant when he talked in a
20 foreign accent in that conversation?

21 A. That somebody foreign was buying the stock.

22 Q. It didn't come to you after --

23 A. After I found out it was Burma Oil then I said
24 somebody over in London knew something who bought the
25 stock.

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identification, but was not received into evidence."

BY MR. PERLIS:

Q At the time you attached no special significance when he said in a British accent "I can't say."

A No. Just that someone foreign bought the stock.

MR. RUBIN: Let's go off the record.

(Discussion off the record.)

MR. McCONIHIE: On the record.

MR. ZIELERMYER: Mr. Rauch has told me what he means to say is that he understood Mr. Firkser to be telling him that the customer of Mr. Firkser who had bought the 6,000 or 7,000 shares referred to by Mr. Rauch's father was British.

BY MR. PERLIS:

Q Did you at any subsequent time discover Mr. Firkser's source of information?

A No. I called him a couple of times to ask him if he heard anything new and he used to say to me that his client was out of town.

BY MR. McCONIHIE:

Q Let's go on from this point. You call McMahon after talking to your father and Firkser. Is that right?

A Yes.

Q McMahon said he didn't know anything?

A That's correct. He said I don't know. Nobody's here.

[18]

Q Who did you next talk to about this acquisition of Geon?

A I called up Mr. Neuwirth.

Q Was this immediately after your conversation with McMahon or some time later?

A I would say around then. This is November I would say. I would say in the beginning of November.

Q What did you call Mr. Neuwirth for?

A Just to ask him if anything was doing.

Q Did you ask him any specifics?

A No. Just generally like how's everything. I said to him --

Q What did he say to you?

A Marvin, everything is great. This was the start of the energy crisis. I said, George, how is this going to affect you. He said, Marvin, this is the greatest timing of events for us because everything is going to be small cars.

Q Did he mention the acquisition possibilities for Geon?

A No. I said how about having lunch and he said fine so he made a date there and then for him to meet me. This was in November.

Q Did you meet him?

A Yes.

1
2 BY MR. RUBIN:

3 Q How soon after the call was the lunch?

4 A Maybe a week or two at the most. It was in
5 November before Thanksgiving.

6 BY MR. McCONINE:

7 Q What did you discuss at lunch?

8 A We went to the bar first and he said to me I don't
9 want to talk because the bar tender is the kind of guy who
10 likes to listen. We waited until the bar tender moved away
11 and he gives me some new brochures he brought on this new
12 division they opened up on ultra fine car parts.

13 He said look at me, so I looked at him and he
14 winked at me. He touched me on the leg and said what do
15 you personally own the stock at. I said personally my
16 average is about $23\frac{1}{2}$ or 24.

17 BY MR. RUBIN:

18 Q You're talking about your average personally and
19 not for all your customers.

20 A He was asking me what do I own the stock at.

21 BY MR. McCONINE:

22 Q In other words what your base is for all your pur-
23 chases so far?

24 A I would imagine that's what he meant.

25 Q What did you mean when you said 23.

26 A I forgot the split. My average would be roughly

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identification, but was not received into evidence."

[20]

around 15 or 16. He says hold on for the next 60 days. That was the gist of the drink at the bar.

Q Did you ever find out what he was talking about?

A Let me continue. I think it was a week or ten days later I got a phone call at home. It was a Friday night.

Q Was this the Friday before the public announcement?

A Yes.

Q November 30?

A Yes. I got a phone call Friday night and he says Marvin, I think I owe it to you. You'll see an announcement coming out Monday morning that we're having discussions with Purma Oil of England on a possible acquisition of Geon.

I got off the phone and was excited so I sent him a bottle of liquor saying good luck.

BY MR. PERLES:

Q Between the time you met at the bar and your conversation on November 30 had you purchased any additional shares of Geon for either your own accounts or the accounts of any of your customers?

A Not really. If I did it was very little, but I have the records with me. It was very, very little because I had a monstrous position by then anyway.

BY MR. DRAKE:

Q What bar were you in?

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1 A. North Shore Steak House.

2 Q. Was there anyone else there with you?

3 A. No. It was just the two of us.

4 BY MR. RUBIN:

5 Q. Did you buy any from the end of October through
6 November 30?

7 A. I bought some.

8 BY MR. MCCONNIE:

9 Q. Did you bring your trading records with you?

10 A. Yes.

11 (Discussion off the record.)

12 MR. ZEILERMAYER: The record should reflect that I
13 have tended to you gentlemen photostatic copies that Mr.
14 Rauch made at my direction of those pages from his books
15 which reflect all of his customers who had long positions
16 in Geon at the close of business on February 21, 1974.

17 MR. McCONNIE: Let the record also reflect that
18 any particular account which we discuss we'll have marked
19 as an exhibit.

20 (Discussion off the record.)

21 MR. McCONNIE: Let me ask the Reporter to make
22 this document as Rauch Exhibit 1

23 (Rauch Exhibit No. 1 was marked
24 for identification.)
25

[22]

BY MR. MCCONNELL:

Q Mr. Rauch, let me show you Exhibit No. 1 which is Beverly Rauch special account. What is that account?

A Beverly Rauch is a special account I opened up on August 8, 1972 which I purchased Geon and transferred over to the other Beverly Rauch account.

Q Let's look at the back side where it shows purchases.

A I used the same sheet when I bought Geon in November at Edwards & Hanly. When I opened it up originally at 600 shares in August.

Q Were those two transposed over to Beverly Rauch's other account?

A That's correct.

Q What about the purchases we see next on that page.

A Those are additional purchases that I made in November.

Q Who were you making those purchases for?

A My wife.

Q Was she providing the money for that?

A Yes, she was.

Q Those purchases are 11-2 and 11-6. Right?

A You'll see November 2, 6, 12 and 16.

Q At the time those purchases were made had you had your luncheon with Mr. McConrath?

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1 A No. I'm trying to think now. No, I don't think
2 so.

3 Q What information did you have at that time with
4 respect to the possible acquisition of Geon?

5 A There was a rumor of it but I had no confirmation
6 of it.

7 Q You had the conversations with your father and
8 Mr. Firkser and you had called McMahon.

9 A Right.

10 Q But you had not yet had lunch with Neuwirth.

11 A That's correct.

12 Q The purchases there in December 3, 4, and 13 --
13 by that time you had had lunch with Neuwirth.

14 A That's correct.

15 Q What additional information did you have with
16 respect to the acquisition of Geon at the time of these
17 purchases. The first part of December.

18 You had had a discussion with your father and
19 Mr. Firkser and lunch with Mr. Neuwirth.

20 A And the Coenen report.

21 Q What else did you have?

22 A On December 3 was the public announcement.

23 Q So in addition you had the public announcement.

24 A That's correct.

25 Q What else did you have when you made purchases on

the 4th and 13th.

A. Nothing else.

Q. You had no additional conversations with Heuwirth?

A. Yes, but no additional information.

Q. Did you get any additional information from McMahon?

A. No. He didn't know anything definite. He just knew there was something going on.

Q. When you would buy for the Beverly Rauch special account would you also buy for a number of your other customers?

A. Sure.

Q. You would buy for a number of accounts at the same time.

A. That's correct. This is when I became extremely bullish on the stock again.

Q. What other accounts particularly would you be paying attention to and buying for?

Some of your customers you might have mentioned to them casually at some time pick up some Geon. It might be a good buy. On the other hand there are other customers that you know they should be in Geon.

Which are your special customers that you put in Geon.

A. Let me start again. Coming to this time I had a

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1 high position in Geon. When I received the Coenen report
2 which was the beginning of November I became extremely
3 bullish on Geon and that's when I went around to all my
4 people who if possible were able to average down or make
5 new commitments in Geon. I was a big bull then.

6 I spoke to the analyst on Geon and I spoke to
7 people who knew the analyst on Geon and he told me that
8 he carries a lot of weight in the street and they were
9 estimating the stock to move anywhere between 17 and 20
10 based on his report b-cause Geon is a very thin stock and
11 tightly held so the float is not that large.

12 If there was any good buying then on this report
13 the stock would move up. Something else I remember now.
14 Loub, Rhoades had an analyst meeting at the same time. All
15 this happened around the same time.

16 Q What time was that?

17 A End of October and November. This is when I
18 start to come like a bull again. In the mail I received
19 this.

20 (Discussion off the record.)

21 MR. ZELLMYER: Let the record reflect that Mr.
22 Rauch has submitted this paper.

23 MR. MCCONNIE: Let's get it marked as Rauch
24 Exhibit No. 2.

[26]

(Rauch Exhibit No. 2 was marked
for identification.)

THE WITNESS: The analyst meeting that Loab, Rhodes
conducted and the Coenen report was just tremendous because
either them buying or Coenen's people buying I know I had to
move in the stock.

(Discussion off the record.)

BY MR. McCONIHIE:

Q I was reviewing your account cards, Mr. Rauch. I
notice between November 20 and 30 there is a large amount
of purchasing in Geon. Were the buys there prompted pri-
marily by your luncheon with Mr. Neuwirth?

A I would say it was part of all my bullishness.

Q At least added to your bullishness.

A Yes.

MR. McCONIHIE: Let me get this marked as Rauch
Exhibit No. 3.

(Rauch Exhibit No. 3 was marked
for identification.)

BY MR. McCONIHIE:

Q Let me show you this and ask that you identify
it.

A Yes. That's Mr. Maione's account.

Q Do you know Mr. Maione?

A No.

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identification, but was not received into evidence."

Q This account was opened 12-9-71.

A That's correct.

Q Did you speak to Mr. Malone about opening this account?

A I don't believe so.

Q Can you tell me how this account came to be opened?

A Through Mr. McMahon. We were talking if I had any good situations for his father-in-law and that's how it got opened.

Q Where did the funds that went into this account come from?

MR. ZELERNYER: Are you referring to any particular point in time?

BY MR. MCCONNIE:

Q When the account was opened.

A I believe the funds were mailed directly to Loeb, Rhodes to the best of my recollection.

Q By whom?

A I don't know. I would say by Mr. Malone.

Q From whom did you take orders with respect to this account?

A Mr. McMahon.

Q Why would you say Mr. Malone sent the money in?

A Because the confirmations went to him and every-

[28]

thing else went to him.

Q Who were you employed by when this account was opened?

A Philips, Appel & Walden.

Q Then you took this account with you to Edwards & Hanly?

A There was nothing to transpose. I just re-opened it when I joined Edwards & Hanly.

Q Was there anything in the account when you came to Edwards & Hanly?

A No. I used the sheet when the account reopened. I used the same sheet in my book.

Q Did you do any trades for this account?

A At Philips, Appel. Those two trades. Just those two trades in December and March.

Q What year was that?

A 1972. I open the account on 12-9-1971.

Q These trades would be the end of 1971 and the beginning of 1972.

A Yes.

Q With respect to those trades the order came from McMahen.

A I believe so.

Q And you didn't handle any of the funds insofar as paying for those securities or paying out the proceeds from

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the sale.

A. That's correct as far as I recall.

BY MR. PINLIS:

Q. Were those trades solicited or unsolicited?

A. These trades were solicited.

Q. By yourself?

A. Yes.

Q. To McMahon.

A. Yes.

BY MR. DRAKE:

Q. You knew that those trades were for McMahon's account even though they were in Maione's name.

A. No. At the time I think Mr. McMahon told me to give them to his father-in-law.

Q. Why did you call Mr. McMahon to solicit trades for this account?

A. That's when he told me to open up the account.

Q. In his father-in-law's name?

A. Yes.

Q. In Mr. Maione's name.

A. Yes. To the best of my recollection because I opened up another account for Mr. McMahon right after that.

BY MR. MCCONNELL:

Q. When you were at Edwards & Henly you had an account card for Maione but nothing in the account.

[30]

1 A That's correct.

2 Q How did Geon come to get into that account in
3 November of 1973?

4 A The Geon came into the account from me talking to
5 Mr. McMahon. I don't know whether I started to solicit
6 that first order or whether he came back. I don't remember
7 but at the time he said buy it and put it in my father-in-
8 law's name.

9 Q Where did the funds to pay for these purchases
10 come from?

11 A The funds came from Mr. McMahon. Mr. McMahon
12 was going to put up the money for this. After he bought
13 the stock he went to his father-in-law to see if his father-
14 in-law would give him the money for the shares of stock.

15 Q This is what Mr. McMahon related to you?

16 A Yes. He went to his father-in-law to ask him for
17 the money and his father-in-law wouldn't give him the money.
18 So it was now around the middle of November.

19 Q We're talking about the trades on 11-2, 11-6 and
20 11-9-73?

21 A Yes. The money was due seven days later.

22 Q For 11-2 it's already due 11-9.

23 A It was on extension so you're talking about the
24 15th. So Mr. McMahon ran into a problem where he called
25 me and told me at this time that his father-in-law wouldn't

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identification, but was not received into evidence."

1 give him the money. Now there was a problem. He said he
2 was going to try and borrow the money. He tried to borrow
3 \$5,000 and he was turned down.

4 Q Is that how much was needed here?

5 A Yes. On margin. He decided to go to either
6 Household Finance or Beneficial Finance and he was able to
7 get \$2,500. This is when I told him that maybe I could lend
8 him the balance because his extension was already due and to
9 liquidate the account would mean the account was frozen.

10 Q Did you recommend that he go to Beneficial Finance
11 or Household Finance?

12 A I think it came up in conversation because he knew
13 I borrowed money for home improvement loans at times.
14 Evidently he went to one of those finance companies because
15 I met him to pick up the money.

16 Q Why was he putting this in his father-in-law's
17 account. Why didn't he just put it in his account?

18 A Let me explain. When I first opened the account
19 for Mr. McMahon you'll notice it has the wrong business
20 address on there and employer and wrong phone number.

21 The reason for that is he didn't want anyone to
22 know that he was working for a public company, especially
23 Geon.

24 Q I want you to pull out McMahon's account. That
25 was opened 4-5-72.

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identification, but was not received into evidence."

. ONLY COPY AVAILABLE [32]

1 A Yes.

2 Q There was all that information on there about
3 Arthur Anderson and so on because McMahon didn't anyone to
4 know he was associated with a public company, especially
5 Geon.

6 A That's correct.

7 Q But you don't get any trades in Geon until August.
8 If McMahon is going to give you all this information to avoid
9 revealing that he is employed by Geon, a public company, and
10 the trades in Geon aren't for many months after that.

11 Can you explain that? Why is he interested in
12 covering up his Geon employment when he's not trading in
13 Geon stock.

14 A He just said he didn't want anybody to know that
15 he worked for a public company at the time.

16 Q Who is going to know besides you?

17 A Loeb, Rhoades was investment banker of Geon.

18 Q Were you not at Edwards & Hanly in April of 1972?

19 A I was at Philips, Appel where Loeb, Rhoades
20 cleared.

21 Q Let's get back to the other account. What was
22 the explanation for putting the November purchases in the
23 Malone account?

24 A This is what he wanted.

25 Q Did he tell you why?

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1 A No.

2 Q Did you ask him why?

3 A I might have.

4 Q Did it make any sense to you at the time to put
5 purchases of one customer into the account of another cus-
6 tomer?

7 (Discussion off the record.)

8 MR. McCONINE:

9 Q The question is why put the November, 1973 pur-
10 chases by McMahon in his father's account rather than in
11 his own account?

12 A Repeat that. A thought came to me.

13 Q Why put the 11-73 purchases of Geon stock by
14 McMahon in his father-in-law's account rather than putting
15 them in his account.

16 A If I remember correctly I told him to put it in
17 his account. I said put it in your account.

18 Q You're putting it in the account, aren't you?
19 These are your records.

20 A At the time I said put it in your account and he
21 said I don't want it my account so I said why don't we open
22 an account for your wife and he said no because it was back
23 to the original thing that he doesn't anyone to know he works
24 for Geon. Then he asked me do I have an account for his
25 father-in-law and I said yes so he said put it in that

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account.

Q I'm sorry. That just doesn't make any sense to me at all. Why would putting it in his wife's account bring up the problem of his working at Geon?

A Because on a new account form you have to put down what the husband does.

Q Why? You didn't put it on the old account. The old account says he works for Arthur Anderson. Why would you have to bother with formalities when you open an account for his wife?

A He knew I had to put down that he works for Geon, at that particular time. I think he just joined Geon when I met him. I don't remember.

Q That was back in 1970?

A 1971.

Q Let me ask you about this loan of \$2,500 you made to him so he could buy the stock in November.

A This was after the stock was bought.

Q You made him a loan.

A My wife did. I got her permission.

Q Can you tell me the conditions of that loan?

A None.

Q Was it in fact a loan in the normal sense of the term loan?

A Yes.

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Q What was the interest rate?

A None.

Q What was the evidence of indebtedness? Did he sign a note or anything?

A No.

BY MR. DRAKE:

Q Was it secured by anything?

A No.

Q Who possessed the securities?

A Mr. Maione. It's in the account.

Q Where?

A At Edwards & Hanly.

Q Did Edwards & Hanly know you loaned him the money?

A No.

Q Did you give him the money in cash?

A Yes.

Q Did you actually give him the cash and he gave it back to you?

A I went to meet Mr. McMahon and collect his money and the balance I put in the account as cash.

Q Did he know you were putting it in his account?

A Yes.

Q Did he ask you to do that or did you suggest it?

A There was no choice at that point.

Q Why not?

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A. The money was due on the second extension. It's already the end of November

Q Were you aware of Mr. McMahon's financial situation?

A. No.

Q Did you ever ask him if he could pay for it?

A. No.

Q On margin or otherwise?

A. I never asked any questions.

Q Is this how you handle your other accounts?

A. As far as what?

Q Customer resources to pay for securities. Do you ever ask your other customers?

A. Not really.

Q When a customer calls and asks you to buy securities do you ask him a bank reference?

A. Yes.

Q Did you ask Mr. McMahon for a bank reference?

A. Yes.

Q Did you or Edwards & Hanly check it?

A. I think they did.

Q Did you have any reason to believe that Mr. McMahon could pay for these securities?

A. I believed that he could pay for them.

Q What was that belief based upon?

A. Just knowing him.

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Q There was no check of his financial status.

A No.

Q You purchased the securities for Mr. McMahon on a solicited order by yourself.

A I didn't solicit all these purchases that I recollect.

Q We're talking now about the securities in the Maione account. The trade where he had to borrow \$2,500. You solicited that trade, did you not?

A Not all the trades.

Q What do you mean?

A Mr. McMahon owns the stock at a higher price. His average is around 17 on his stock. When I became very bullish on the company I suggested he average out if he could and that's when he bought 200 shares.

Q And these shares were put in his father-in-law's account.

A Yes.

Q And this is a transaction where you gave him \$2,500.

A This is after.

Q Same transaction though.

A Right. When he couldn't come up with the money then my wife or I helped him pay for it.

Q But these two transactions, you solicited those from Mr. McMahon.

A. I don't follow you.

Q. Did you call him or did he call you?

A. On the first one I called him.

Q. What about on the second one?

A. I think he called me.

Q. Were there other ones?

A. No, that's all.

Q. But at no time did you ask him if he could pay for them.

A. He said his father-in-law has plenty of money. He has money.

Q. Did you ever talk to his father-in-law.

A. No. Not really.

Q. Prior to 1974 did you ever talk to him?

A. I don't think so.

Q. Where did you get this information about Mr. Malone on his account card?

A. I don't recollect.

Q. You say you estimate the client's net worth at \$50,000. Where did you get that figure?

A. It's an arbitrary figure. No definite basis for that.

BY MR. MCCONNELL:

Q. Was it clear to Mr. McElshon that you were making him a loan?

1 A. Yes.

2 Q. Was it clear to McMahon when he would have to
3 repay this loan?

4 A. There was no time limit on it that I recollect.

5 Q. Was it clear to McMahon as to what he would have
6 to pay you for the use of the money?

7 A. No. Nothing.

8 Q. Was there any understanding between you if there
9 was any profit in these transactions that you and he would
10 share it?

11 A. Yes. There was a conversation where he said if
12 there was a profit we would share it and I told him if
13 there's a profit you can keep it.

14 Q. Was his father-in-law to share if there was any
15 profit in this?

16 A. I don't know.

17 Q. But you indicated to McMahon if there were a
18 profit he could keep it all.

19 A. Yes. I remember telling him that.

20 Q. Do you recall when that conversation took place?

21 A. When I put the money in the account.

22 Q. Was this by telephone or was he there?

23 A. I would say it was by telephone.

24 Q. In your own mind, if there was a profit in this
25 account was it your contemplation that you would get some

[40]

part of it?

A. Yes, he said if there was a profit he would want to split it with me.

Q. And you told him this wouldn't be necessary.

A. And I told him this wouldn't be necessary.

Q. But did you think anyway if there was a profit you might get some of it?

A. No.

BY MR. DRAKE:

Q. Why did you loan Mr. McMahon \$2,500?

A. When he couldn't borrow money he ran into a problem.

Q. Why didn't you cancel the trade?

A. I mentioned that. This is two weeks later when this happened. Then there would be a frozen account.

BY MR. MCCORMIE:

Q. But there's nothing in this account?

A. He's already bought Geon.

Q. So liquidate it. Was it any concern of yours that the account should or shouldn't be frozen?

A. He originally thought he would get the money from his father-in-law. He ran into this problem after the extension was due. When it finally got down to the money was due I didn't want to liquidate the account. I think it was my fault.

Q. Why didn't you want to liquidate the account?

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Any particular reason?

A. No.

Q. Have you ever loaned money to customers who ran short of cash and didn't have the funds to purchase?

A. No.

Q. Did you feel you had some obligation to loan him money?

A. Not at all.

Q. Did Mr. McMahon execute a promisory note to you for the funds?

A. No.

Q. Did you believe that by loaning him money you would continue to have an inside track so to speak about Geon's activities?

A. No. Not really.

Q. Was this loan to Mr. McMahon made after you had had lunch with George Neuwirth?

A. Yes.

Q. Did you tell Mr. McMahon of your conversation with Mr. Neuwirth at lunch?

A. I think I did.

Q. Did you ever tell Neuwirth about the loan of money to McMahon?

A. No.

Q. Did anyone else at Edwards & Hanly know of your

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luncheon with Mr. Neuwirth?

A. I think Mr. Rosenfeld or Mr. Lynn knew I had lunch with Mr. Neuwirth.

Q. Did they inquire of you or did you disclose to them what the subject of that luncheon meeting was?

A. No.

BY MR. DRAHE:

Q. I believe you testified that certain information contained in your customer account book about your customers was incorrect, especially that relating to Mr. Maione as well Mr. McMahon. Is that correct?

A. Mr. McMahon's was incorrect.

Q. Mr. Maione's you just estimated the net worth on no figures that you had available.

A. That's correct.

Q. What about his address and place of employment?

A. That is accurate.

Q. Where did you get that information?

A. I don't recall that.

Q. How do you know it's accurate?

A. I spoke to Mr. Maione at his business.

Q. I thought you testified that you didn't speak to Mr. Maione prior to 1974?

A. That's correct. I spoke to Mr. Maione before I came down to testify at the Amex.

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Q When this information was put down on 12-9-71 how did you know it was accurate?

A I don't know.

Q On Mr. McMahon's account you put this information on his card?

A I opened the account for him before it was typed.

Q Who typed it?

A Someone in Philips, Appel.

MR. ZELERNYER: Could we mark that?

MR. DRAKE: Yes. Rauch Exhibit No. 4.

.(Rauch Exhibit No. 4 was marked for identification.)

BY MR. DRAKE:

Q That information on there is incorrect?

A Yes.

Q Let me read this: "We deem the questions contained in this section important under the know your customer rule of the New York Stock Exchange and therefore must be answered in full."

Were you aware of those requirements when you entered the false information?

A Yes. When a new account was opened at Philips, Appel you put that information on a rough sheet and gave the rough sheet to the office and the office would type it up for the brokers. This is what I could get back.

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MR. ZILBERMAN: I think there's some confusion here. You have before you the original of what has been marked as Rauch Exhibit No. 4.

THE WITNESS: That's correct.

MR. ZILBERMAN: Did you enter any of the typed information on the original of Rauch Exhibit 4?

THE WITNESS: No.

BY MR. DRAKE:

Q Are you familiar with the know-your-customer rule?

A Yes.

Q Did you know at the time you filled out this information that that information was incorrect?

A Yes.

Q And you did so willfully?

MR. ZILBERMAN: I think that calls for a legal conclusion. He's testified that he did it.

MR. DRAKE: All right.

Q I ask you to look in the lower left hand corner of the same account card. Do you have any direct or indirect financial interest in this account.

A It says no.

Q I also refer you to the information on Maione account. Does that also say no?

A That's correct.

Q That did change. You did loan Mr. McMahon \$2,500

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that was put in the account of Mr. Maione. Is this correct?

A. Right. At a different brokerage house.

Q. Do you have to have new account cards at Edwards & Hanly?

A. Yes.

Q. Did you open any there?

A. Yes.

Q. Where are those?

A. Here is a copy.

MR. ZELERMYER: I have a copy here of what appears to be new account reports for James McMahon and Louis Maione at Edwards & Hanly.

MR. McCONINE: Let's take a break.

(A short recess was taken.)

(Rauch Exhibit No. 5 was marked for identification.)

BY MR. DRAKE:

Q. I ask you to look at Exhibit 5. It's a one page copy of what purports to be new account reports of Edwards & Hanly. I direct your attention to the top part of the page.

Who prepared this?

A. This was prepared either by my wife or my secretary at Phillips, Appel.

Q. This is 8-30-73?

A. Right.

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Q Why was that prepared at Philips, Appel?

A At this time I was leaving Edwards, Appel for Edwards & Panly. I wanted to be prepared. When you go to a new firm you have to fill out new account forms and get new numbers so in August all the accounts I had that were active these were made up for me.

Q Why did you leave Philips, Appel?

A For a lot of good reasons. At Philips, Appel my business started to go down. The reason for that is all that Philips, Appel offered their customers was stocks and bonds.

When my production started going down I started looking elsewhere. I started to get calls in the spring of 1973 from different brokerage houses I went to see. One gentlemen told me if I remained where I was in the period of two years I would be out. I couldn't make a living.

MR. ZELERMYER: Let me interrupt. I don't know if this is what they want. You resigned voluntarily?

THE WITNESS: Yes.

BY MR. DRAKE:

Q The top part of the page is in your wife's handwriting.

A That's correct. The top part is mine. The account number, account category and date is mine. The social security and the rest of the information is not mine.

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1 Q You signed this?

2 A That's correct.

3 Q So you were aware of the information that was on
4 here.

5 A Yes.

6 Q The date you signed this was somewhere around
7 8-30-73.

8 A Right.

9 Q You knew as of that date that Mr. McMahon was not
10 an employee of Arthur Anderson?

11 A That's correct.

12 Q Did you submit this to Mr. Rosenfeld for his sig-
13 nature?

14 A Yes.

15 Q Did he ask you any questions about it?

16 A No.

17 Q On the bottom of that page is the account of Mr.
18 Malone. Whose handwriting is that?

19 A That is mine.

20 Q The date is 11-1-73. This was approved by Mr.
21 Lynn.

22 A That's correct.

23 Q Who is Mr. Lynn?

24 A He is the associate manager of the office.

25 Q And Mr. Rosenfeld is the branch manager?

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A. That's correct

Q I notice that neither of these are signed by the customer. Is there any reason for that?

A. They never do that I know of.

Q You never have the customer sign his account card?

A. No. Never.

BY MR. McNEIFF:

Q Mr. Rauch, do you have any discretionary accounts?

A. No.

Q Do you have any you treat as discretionary accounts?

A. Yes.

Q What are those?

A. My --

Q Let's forget about your wife and kids.

A. None.

Q Your wife and kids are the only ones you treat at discretionary accounts?

A. That's correct.

Q Who is Mrs. Phyllis Eide?

A. That's my sister-in-law.

Q Her husband is your brother?

A. Brother-in-law. She's my wife's sister. My sister-in-law.

BY MR. DRAKE:

Q You opened the McElahan account on 4-5-72 while you

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1 were an employee of Philips, Appel.

2 A. Correct.

3 Q. The first time Mr. McMahon in Geon either in
4 his name or in the name of Mr. Maione is not until August.
5 Is it the reason the Arthur Anderson place of employment
6 was put on because Mr. McMahon told you he didn't want any-
7 one to know he was working for a publically held company.

8 A. That's correct.

9 BY MR. McCONIHE:

10 Q. Let's shift our focus to the eventful Friday
11 of February 25.

12 MR. RUBIN: Let me ask one question.

13 Q. Mr. Rauch, you mentioned that you don't have any
14 discretionary accounts. On any occasion since you've be-
15 come a registered representative do you recall ever buying
16 stock for any account, other than your wife's account, in
17 which you first purchased the securities and then called
18 the customer and said do you want them?

19 A. No.

20 Q. You've never bought stock and then later informed
21 the customer or offered them to the customer?

22 A. No.

23 BY MR. McCONIHE:

24 Q. Let's move to February 22. Are you familiar with
25 that date?

1 A Yes.

2 Q What I would like to do with you, as best you can
3 reconstruct what you did that day.

4 A I was fast asleep when the phone rings around 1:00
5 or 1:30. It was Mr. McMahon. He says to me sell my stock
6 and sell my father-in-laws stock.

7 I think I said to him why or I might have just hung
8 up. I called him back at 7:30 in the morning and I said to
9 him did you call me or was I dreaming and he said no, I called
10 you.

11 I said what's wrong. He said I don't know. There's
12 something screwy with the numbers. We'll have to work on it.
13 That was all.

14 Q When he said there was something screwy with the
15 numbers did you understand what he meant by that?

16 A Not really.

17 Q What did you think it meant?

18 A That there was trouble with the numbers. I didn't
19 feel it had anything to do with the deal.

20 Q What numbers? Earnings?

21 A I knew the auditors were there and Mr. Newirth
22 told me the auditors were there. To this day I still don't
23 actually know what an audit is. When he told me that I
24 didn't think it was any catastrophe.

25 BY MR. DRAKE:

Q You called him at home?

A In the morning.

Q At his home?

A Yes.

Q How long did that conversation last?

A About three or four minutes.

Q What did he say?

A There's something screwy with the numbers and we won't know until over the weekend what the story is.

Q What did you say to that?

A I don't remember.

BY MR. PERLIS:

Q Did you find that 1:30 call disturbing?

A Yes. I was up half the night.

Q What were you thinking about while you were up?

A I thought the deal was off.

BY MR. DRAKE:

Q Did you know there was a board of director's meeting the previous night?

A I knew there was a meeting.

Q Did McMahon mention it or did you just know it?

A I think he mentioned there was a meeting.

BY MR. PERLIS:

Q Was this in the 1:30 conversation or prior to that?

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A. It was at 7:30, or maybe later Friday afternoon.

BY MR. BRINK:

Q. Did you indicate to Mr. McMahon that he couldn't sell the shares?

A. No.

Q. Did you ask him where he got his information?

A. No.

Q. Were you aware it was inside information?

A. I am now.

Q. Were you then?

A. Yes.

Q. Did it cross your mind to tell Mr. McMahon if it was inside information he couldn't trade on it?

A. No.

Q. Go ahead.

A. I was speaking to Mr. Neuwirth the week before and bought myself another 1,000 shares of stock.

Q. What did Mr. Neuwirth say?

A. I spoke with Mr. Neuwirth on Tuesday and said how are you doing. He said, Marvin, great. Everything is just great. I had some buying power in the account. I remember asking somebody to figure out how much it would cost me to buy 1,000 shares at $14\frac{3}{4}$. It came out to \$15 net so I figured I would make \$1,800 net with commissions and send my kids to camp.

Q What did Mr. Neuwirth say. This is on the 19th?

BY MR. RUBIN:

Q Did he tell you about the meeting?

A No. It was the week before. He said they expected to sign before the auditors are finished.

MR. ZELLMYER: I think the record is confused. Are you talking about a different conversation now?

THE WITNESS: Yes. It might be. No. I think it was a different conversation.

BY MR. RUBIN:

Q This is the week of the 19th.

A Right. That's when I bought 1,000 shares.

BY MR. ZELLMYER:

Q Just describe what was said in the conversation on the 19th.

A Just Marvin, everything is great. When I hung up that's when I bought 1,000 shares.

BY MR. PERLIS:

Q You started to mention something about how you knew about the meeting. Was that in another conversation?

A Yes. I spoke to Mr. Neuwirth and he told me they want a year end audit but we should sign the purchase agreement before the auditors are finished. So it made sense that there must be a meeting coming up that week.

Q When was that conversation?

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A. I think it was the week before.

Q. Before the 19th?

A. Yes.

BY MR. RUBIN:

Q. The week of 11th?

A. Somewhere around that time. Then when I spoke to McMahon I think a meeting was mentioned. I said to him was there a meeting with Burma and he says I don't know. I don't think he knew what kind of meeting it was.

BY MR. DRAKE:

Q. This is in the 7:30 conversation?

A. I don't know. 7:30 or some time later that day because he called me.

Q. You called him from your home?

A. Yes.

Q. Was anyone else in the room with you?

A. Either my wife was or wasn't. I don't recall.

BY MR. RUBIN:

Q. Did you speak to anyone else from 1:30 to 7:30?

A. No.

Q. Did you speak to anyone else between 7:30 and when you got to the office that morning?

A. No.

BY MR. PERLES:

Q. Did you then go to work immediately?

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1 A. No. The regular time.

2 Q. What time is that?

3 A. Anywhere from 9:00 to 9:15.

4 BY MR. DRAKE:

5 Q. You didn't call your office prior to going in?

6 A. No.

7 Q. When you went in did you find anything in reference
8 to Geon or did you do anything immediately?

9 A. No. Read the paper.

10 BY MR. McCONIHE:

11 Q. When you first came in to the office around 9:15
12 who was there?

13 A. I would say a few of the boys.

14 Q. Who is that?

15 A. Who was there?

16 BY MR. DRAKE:

17 Q. Was Mr. Rosenfeld there?

18 A. He might have been.

19 BY MR. McCONIHE:

20 Q. How many people are in your office?

21 A. About 18 or 19.

22 Q. There's Rosenfeld at the top who is the manager?

23 A. Right.

24 Q. Under him is Lynn?

25 A. Right.

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identification, but was not received into evidence."

Q Underneath that is a bunch of salesmen?

A That's right.

Q When you walked into the office you say Rosenfeld might have been there?

A Might have been.

Q What about Lynn?

A He's not there before 10:00.

Q What about Leopold?

A Not that I recall. When I come into the office I usually go to the news ticker.

Q Do you recall having done this on the 22nd?

A I do it every day.

Q You came into the office and went to the news ticker.

A Then I read the newspaper. Then I spoke to Mr. Rosenfeld as I always do.

Q On this morning when you spoke to Mr. Rosenfeld what did you talk to him about?

A Nothing special.

Q You had just received a call from McMahon at 1:30 in the morning and you called him at 7:30. Then you went to speak with Rosenfeld but you never mentioned McMahon's call?

A No.

BY MR. DRANE:

Q When you arrived at the office were you planning to sell McMahon's securities?

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1 A. Yes.

2 Q. What about your own?

3 A. No.

4 Why?

5 A. I didn't have any reason. I didn't feel scared.

6 Q. But you said you stayed pp half the night.

7 A. I was just worried the deal was off.

8 Q. On February 22 how many shares of your own did
9 you have?

10 A. I had 6,700 shares. My father and mother had
11 4,000. My sister-in-law had 300 and each of her kids have
12 300. Two kids. That would be 900. My brother-in-law
13 Herbert Eide has 1,200. My other brother-in-law has 600.
14 Bezosi. Linda Rauch had 100. Scott, my son, had seven
15 shares.

16 BY MR. RUBIN:

17 Q. How many did all your customers have on the
18 morning of February 22.

19 A. I would say between 60,000 and 70,000 shares.

20 Q. Would that include the 12,000 or so you just
21 talked about?

22 A. Yes.

23 BY MR. MCCORMICK:

24 Q. At the time you went in to speak with Mr. Rosen-
25 field had you prepared the order tickets for McMahon's sale?

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identification, but was not received into evidence."

1 A No.

2 Q While you were in talking to Mr. Rosenfeld did any-
3 one else come in the room?

4 A Not that I know of.

5 Q What did you do after that?

6 A I went back to my desk and was on the phone.

7 Q With who?

8 A I wasn't on the phone til 10:00.

9 Q What did you do when you finished talking to Mr.
10 Rosenfeld?

11 A Read the paper.

12 Q How long did you talk with him?

13 A Two or three minutes.

14 Q What was the substance of your conversation?

15 A Anything doing? Anything on the agenda. Any
16 products he comes up with in the morning or opinion of the
17 market.

18 Q Do the rest of the salesmen usually have this
19 little chat with Mr. Rosenfeld?

20 A Rosenfeld is the kind of guy that speaks to all
21 the men and pushes the men. He's always got something like
22 maybe you should do this or that.

23 Q Then you went back to your desk and read the paper.

24 A Yes.

25 Q After you read the paper what did you do?

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identification, but was not received into evidence."

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1 A. I wrote up the tickets to sell 600 shares for
2 Maione and 400 shares for McMahon and 500 shares for Dr.
3 Blum.

4 BY MR. RUBIN:

5 Q. Was that solicited or unsolicited for Dr. Blum?

6 A. I don't remember because I was on the phone with
7 Dr. Blum Thursday and he has 3,700 shares. He's a friend
8 of my father's. He owns the stock at higher prices and
9 bought some stock in the \$9 area. On Thursday he said to
10 me maybe we should start to lighten up.

11 Q. Did you agree with him that he should lighten up?

12 A. Yes. I wouldn't stop anybody at this point any-
13 more.

14 Q. You had bought 1,000 only two days before.

15 A. Yes, because I'm willing to sit.

16 BY MR. DRAKE:

17 Q. Is there any reason why you didn't mention McMahon's
18 phone call to Mr. Rosenfeld?

19 A. I never even thought anything of it.

20 Q. Weren't you talking about market conditions?

21 A. Nobody knows I have a friend of the company named
22 McMahon.

23 Q. Did you want to keep this away from Mr. Rosenfeld?

24 A. I wanted to keep it away from everybody.

25 Q. Why?

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[60]

1 A. Just a relationship I had.

2 BY MR. McCONIHIE:

3 Q. How did you come up with the number of shares to
4 sell for Dr. Blum?

5 A. When we were talking Thursday the conversation
6 was to start selling 500. It's an arbitrary figure he came
7 up with.

8 Q. So you filled out those three order tickets.
9 About what time was that?

10 A. Right before the open. I would say ten to 10:00 or
11 quarter to 10:00.

12 Q. Then what did you do?

13 A. I think I was on the phone with Jack Brettler.

14 Q. What was the purpose of that call?

15 A. He calls me 30 times daily, from North Carolina.

16 Q. Did he call you?

17 A. Yes.

18 Q. What was his problem?

19 A. He's always got a problem.

20 Q. What was it this day?

21 A. Nothing. Buy and sell. The man is unbelievable.
22 He buys and sells.

23 Q. What did he tell you to do?

24 A. Sell his Esso, buy 500 Maron Duke, sell his 400
25 Ethyl -- sell 200 Ethyl. He gives me a load of orders

every day.

Q All right. After you finished that conversation with him what did you do?

A Then the market was open. Geon on the machine was $14\frac{3}{4}$, bid 15.

Q It didn't open, did it?

A No.

Q Where were you getting a quote from?

A The machine. The Bunko Remo machine.

Q It was giving quotes but the market wasn't open in Geon.

A Right.

Q Go ahead. The American tapes were out in our office that day.

Q Had you handed your order tickets in?

A Yes. Before the opening.

BY MR. RUBIN:

Q Was that a routine execution of an order.

A A lot of times I phone in my orders.

Q Were these phoned in by yourself?

A I don't recall. I think Mr. Rosenfeld put them in.

Q Is there any reason why he would do it rather than yourself?

A No. Maybe because I was in the bathroom or some-

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1 thing. I don't know.

2 Q Do you have him phone in orders for you?

3 A Yes.

4 BY MR. PERLES:

5 Q Would these be characterized as special treatment
6 to expedite or whatever?

7 A No.

8 BY MR. DRAKE:

9 Q Did you require Mr. Rosenfeld's approval before
10 you could execute these sales?

11 A No.

12 Q You just put in these three orders?

13 A That's all. Dr. Blum's, Mr. Maione and Mr.
14 McMahon. Just those three before the opening.

15 BY MR. McCONNELL:

16 Q What happened to Mr. Brettler's orders? Did you
17 mark up tickets for them?

18 A Yes.

19 Q Did you call them in?

20 A Yes.

21 Q So then it was more than three orders.

22 A This was after the opening.

23 Q And the three that you put in prior to the opening
24 do you recall how they were put in?

25 A I don't really know. I don't know whether I gave

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identification, but was not received into evidence."

1. them to the girl or Mr. Rosenfeld.

2 Q In any case, by the time of the opening you were
3 back at your desk.

4 A I would say so.

5 Q Just after the market opened what were you doing?

6 A I was on the phone.

7 Q With who?

8 A Nobody that I really remember when the market
9 first opened.

10 Q What's the next thing that you can remember?

11 A The quote on the machine is $14\frac{3}{4}$ -15. Then I
12 think I asked Mr. Rosenfeld to check and see what price I
13 sold my Geon at. Or what did it open at? The tapes are out
14 and it's still at $14\frac{3}{4}$ -15.

15 BY MR. DRAKE:

16 Q What time did you understand the market in Geon
17 to open that day?

18 A I thought it was about 10:25 or somewhere in that
19 area.

20 Q Until the time it opened did you submit any other
21 orders?

22 A No.

23 Q In Geon.

24 A Just those three.

25 Q Did you instruct anyone in the office to submit any

26 "This tape is from an exhibit that was marked for
27 identification, but was not received into evidence."

orders for you in Geon?

A. No.

BY MR. RUBIN:

Q. What did Mr. Rosenfeld say when you asked him to check the price when you sold the Geon?

A. He came back and said imbalance of orders in Geon. I remember having a discussion what imbalance meant. Mr. Rosenfeld and I said imbalance is on the up side and Mr. Lynn said imbalance was on the down side. Now I'm thinking they signed the deal last night so maybe the stock would open up at 16, figuring that it closed so strong on Thursday.

Then we get an indication that the stock was quoted at $14\frac{1}{4}$ - $3\frac{3}{4}$.

BY MR. MCCONNIE:

Q. When Mr. Rosenthal indicated there was an imbalance did this trigger in your mind any recollection about Mr. McMahon's phone call?

A. No. Not at all.

Q. Did anyone ask you why you had Geon orders in?

A. No.

Q. Did they know that you had them in?

A. I don't know.

Q. Mr. Rosenfeld knew, didn't he?

A. I guess so. He had the orders. Anybody else I

1 don't know.

2 Q So Rosenfeld knew you had some sell orders in on
3 Geon.

4 A Right.

5 Q What about Lynn. Did he know?

6 A No. He wasn't there.

7 BY MR. RUBIN:

8 Q You mentioned that McMahon's phone call skipped
9 your mind when you say the term imbalance. At any time
10 before the market opened, which was at 10:33, did you con-
11 sider that there was an imbalance on the sell side and that
12 the market was opening down?

13 A No.

14 Q What happened next?

15 A They come back with an indication on Geon at $14\frac{3}{4}$.

16 Q Who is they?

17 A I don't know if it was Mr. Lynn or Mr. Rosenfeld
18 or somebody got it from the floor. My phones are ringing.

19 BY MR. DRAKE:

20 Q Who's calling?

21 A I was on the phone I think with Mrs. Finegold
22 telling me her debit balance is too high and she's got 200
23 shares of Geon in her account so she said to get it out of
24 margin. That's when I wrote up an order to sell 100 shares.

25 Then I'm on the phone with Herbert Lide.

1 Q He called you too?

2 A Yes. He wants to buy 1,500 shares more of his
3 Computer Design. Then there was Dr. Rochelle.

4 Q Did you mention to Herbert Hild what was happening
5 with Gaon?

6 A No.

7 Q How many shares did he have?

8 A 1,200.

9 BY MR. PERLIS:

10 Q You didn't think you should mention something to
11 him?

12 BY MR. RUBIN:

13 Q That it was opening down and that it was a delayed
14 opening?

15 A No.

16 BY MR. PERLIS:

17 Q At that time had you realized the imbalance of
18 orders was on the sell side?

19 A No. I already had the indication that it was
20 $14\frac{1}{4}$ - $\frac{3}{4}$.

21 BY MR. DRAKE:

22 Q You knew it was a downward pressure.

23 A I didn't think it was so terrible.

24 BY MR. PERLIS:

25 Q But you had expected it to open around 16.

1 A. I was thinking it might open at 16 and when I
2 heard the indication $14\frac{1}{4}$ it didn't sound so terrible to
3 me.

4 BY MR. RUBIN:

5 Q. Didn't that send up some kind of red flag to you
6 and bring back to you McIlahon's conversation and your
7 thoughts that maybe the deal was off?

8 A. No. Not at all.

9 BY MR. DRAKE:

10 Q. What did you expect accounted for the downward
11 trend in the stock?

12 A. I have no tapes. I didn't know the stock opened.

13 BY MR. PERLIS:

14 Q. When you punched out the Dunko Remo machine it
15 was $14\frac{3}{4}$ -15.

16 A. That's correct.

17 Q. I thought you said it was $14\frac{1}{4}$.

18 A. That was an indication from the floor.

19 Q. Did you punch the Dunko Remo machine at that time?

20 A. Yes.

21 Q. What did it come out?

22 A. $14\frac{3}{4}$ -15.

23 Q. Who else were you talking with at that time?

24 A. I was on the phone with Dr. Rochelle. He's crying
25 some he needs money so sell some Geon. He has 2,200 shares

26 -- in case is from an exhibit that was marked for
27 evidence.

of stock.

BY MR. DRAKE:

Q Did any of these customers indicate to you that they knew Geon was an opening delay?

A No.

Q Is it a coincidence that all these customers called between 10:00 and 10:30?

A It's normal procedure.

Q Do all your customers have Geon --

A Most of my customers have Geon. There was a reason for Finegold calling

Q How many customers of yours that had Geon called you that morning?

A To sell?

Q Yes.

A Stanton, Finegold, Dr. Rochelle.

Q Herb Bide?

A He called me but that wasn't the discussion.

Q Did he sell Geon that day?

A I put in 500 shares to sell.

Q Did you do that at your own discretion?

A I don't recall. He gave me an order to buy 1,500 shares of computer Design and that comes out to about \$7,200 and I don't remember the discussion maybe you should sell 500 shares of Geon. I don't remember.

1 Then I'm on the phone with my father at this
2 time when I always call my father to give him his quotes
3 on his stocks. I mentioned where Geon was and there I
4 don't remember whether he told me to sell 500 for my
5 mother.

6 BY MR. PERSLI:

7 Q Did you mention $14\frac{3}{4}$ --

8 A I think I mentioned $14\frac{3}{8}$ because I remember
9 pressing the machine and it said $14\frac{3}{8}$. The stock is open
10 by then. There's still no ticker tape in the office.

11 How long after you talked with Mr. Eide did you
12 talk to your father?

13 A All within the same few minutes.

14 BY MR. DRAKE:

15 Q How many other customers?

16 A That's it.

17 Q Throughout the entire morning did you ever solicit
18 anyone to sell Geon?

19 A No.

20 Q You believe you may have used your discretion to
21 sell for Mr. Eide.

22 A Correct.

23 Q When did you decide to sell your own securities?

24 A I got a call from Ivan Bosky who is with the
25 arbitrage department at Edwards & Hanly.

Q My question is when did you decide to sell your own shares. Those held by members of your family? Brothers, your wife, your son.

A My wife is a completely different story.

BY MR. RUBIN:

Q Let's go through your sales that morning. You've executed 500 for Herb Eide --

A Mr. Rosenfeld is talking on the phone behind me to the order room. He says sell 800 shares of Geon. I think I said Marty, make it 2,000.

Q Why is Rosenfeld selling Geon?

A He made a statement I don't like the opening.

BY MR. DRAKE:

Q Who's he selling it for?

A I don't know.

Q Were you the office expert on Geon?

A Yes.

Q Did he ever consult you whether he should sell Geon?

A On buying on Geon, yes.

Q But not when you should sell.

A No.

Q It's your testimony you had no conversation with Mr. Rosenfeld prior to hearing him telling the people to sell Geon.

1 A. That's correct.

2 MR. ZELERNYER: Other than what the witness has
3 already testified to.

4 MR. RUBIN: I think he testified he gave orders
5 to Mr. Rosenfeld prior to that.

6 MR. DRAKE: Yes.

7 THE WITNESS: He was on the phone and said sell
8 800 and I said make it 2,000.

9 BY MR. PERLIS.

10 Q Who were those shares for?

11 A 300 for Rochelle, 100 for Finegold, 100 for Apro-
12 hamian (sic), 200 for Eide. That's 1,200

13 MR. RUBIN: Do you have a list that will show the
14 1,200.

15 MR. ZELERNYER: I don't have a list but his records
16 will show it.

17 BY MR. PERLIS.

18 Q You mentioned Aprohamian. Was that solicited or
19 unsolicited.

20 (Discussion off the record.)

21 MR. ZELERNYER: The 1,200 shares Mr. Rauch was
22 referring to consisted of 100 shares for Mrs. Finegold,
23 300 shares for Dr. Rochelle, 500 shares for Mr. Rauch's
24 mother, 100 shares for Miss Aprohamian and 200 shares for
25 Mr. Eide. Is that correct?

1 THE WITNESS: Yes.

2 BY MR. PERLIS:

3 Q You mentioned Miss Aprozhamian. Was that a
4 solicited or unsolicited sale?

5 A I was speaking to her on Thursday and if I remember
6 correctly I know she wanted to sell the stock.

7 Q Was 100 all she had?

8 A Yes. The stock has already opened and Ivan Bosky
9 calls me up from the arbitrage department and he starts to
10 yell at me like what are you guys doing. He says you're
11 selling stock on the floor and you're not doing it through
12 me.

13 I said Ivan, I thought you wanted to do block
14 business. I have no blocks to sell. I thought you were
15 selling 5,000 and up. I had about 2,000 shares I sold about
16 two weeks prior to that and he didn't want to take it.

17 Then he says your stock is coming down here and
18 I says I know. I think the tape started to work. Somewhere
19 in that area. He says to me I want stock. I said to him I
20 don't have stock. He says give me stock. I want stock from
21 you guys. I said all right, Ivan, take 5,000 shares and I
22 hung up.

23 Q Where did those 5,000 shares come from?

24 A Sitting with me is a customer who's got about 6,700
25 shares so I asked him the stock is coming down, do you want

1 to sell any? He said no.

2 While I'm on the phone with Ivan I put him on hold
3 and took another call from Don Stanton who knew the stock
4 was coming down and called me up and says sell 300 shares
5 at the market.

6 When he turned me down Kaufman, his stock, it
7 made 5,000 shares because I had 4,400 shares in my special
8 account.

9 Q This is your wife's account?

10 A Yes. So the 4,400, the 300 shares for Stanton
11 and 300 for Eide made a total of 5,000. He wanted to take
12 all I had and make me feel embarrassed I only gave him 5,000
13 shares.

14 BY MR. RUBIN:

15 Q Did the 5,000 you sold to Bosky go across the tape
16 or was it like an in-house transaction?

17 A I don't know how arbitrage is handled. I never
18 dealt with them before.

19 BY MR. DRAKE:

20 Q Have you discussed any of these trades with your
21 customers since the day of the trade?

22 A Yes.

23 Q Who.

24 A Mr. McMahon and Mr. Maione.

25 Q You testified about this previously.

1 A Yes.

2 Q Did you speak to anyone else about these trades?

3 A I spoke to Don Stanton.

4 BY MR. PERLIS:

5 Q What was the substance of that conversation?

6 A I spoke to him when I told him what happened to
7 me at the Exchange and that's how I came to Mr. Zelernmyer,
8 through Mr. Stanton.

9 BY MR. DRAKE:

10 Q Mr. McMahon called you back later that morning?

11 A Yes. I would say noon.

12 (Discussion off the record.)

13 MR. ZELERNMYER: Clarify your last answer about
14 talking to customers after February 22. Name all those
15 people who have accounts to whom you spoke.

16 THE WITNESS: I spoke to Donald Stanton. I spoke
17 to my father. I spoke to Dr. Rochelle, McMahon and Mr.
18 Maione.

19 BY MR. MCCONNIE:

20 Q Let's go back to the morning of Friday, the 22nd.
21 You said Mr. McMahon called you back.

22 A He called me at lunch time.

23 BY MR. DRAKE:

24 Q Did he tell you from where he was calling?

25 A I think I asked him where he was.

Q Where did he say he was?

A In the office.

Q What did he say?

A He asked me if anything came out on Geon. Any news came out on Geon.

Q What did you tell him?

A I read to him the statement that came on the broad tape.

Q What time was that statement put out?

A I don't know. Maybe 11:45.

Q What did he say about it?

A Nothing.

Q You told him you had sold his Geon shares?

A Yes.

Q What about the proceeds from that sale? Were they going to be left in the account?

A We didn't discuss it then.

Q Was that all the conversation was about?

A Yes. I read to him the statement.

Q Then what occurred?

A I think he called me back again later in the day.

Q Where did he call you from?

A The office. Asked me if any news came out and I said no.

Q Did you have any other conversations with him that

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A. No.

Q. What kind of news was he referring to.

A. I don't know.

Q. Did he ever ask you if his trade was executed?

A. I think I told him.

Q. What did you tell him?

A. They stopped trading the stock at $11\frac{7}{8}$ and his stock was sold at $14\frac{3}{8}$ on the open.

Q. Did you have any conversations with anyone at Edwards & Hanly concerning your sales of Geon that morning?

A. Ivan Bosky.

Q. You've already related that conversation.

A. I think I did.

Q. Did you have any other conversations at Edwards & Hanly?

A. I spoke to Ivan Bosky later on that afternoon. He said don't worry. Go home and relax. There'll be a deal on Geon but I think we can get it at a lower price because there's something wrong with the numbers.

Q. Did you tell him you already knew that?

A. No.

Q. But you already knew it.

A. Yes.

Q. Did you attempt that morning to call George Newwirth?

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A. Yes.

Q. When did you try to call him?

A. I would say around quarter to 11:00.

Q. Was he available?

A. No.

Q. What did they tell you?

A. He will speak to you next week.

Q. Did you ask to talk to Mr. McMahon?

A. No.

Q. Did you ask to talk to Frank Bloom?

A. No.

MR. McCONIH: Let's go off the record for a minute.

(Discussion off the record.)

BY MR. DRAKE:

Q. Did you have subsequent conversations with Mr. McMahon?

A. Yes.

Q. Did you call him?

A. I don't recall who called who. I think I spoke to him once over the weekend and then once on Monday. We had a conversation, maybe it was Tuesday. I said to him if anybody asks you if you sold your stock you had better say yes because your name is on the stock.

We had a conversation, maybe after that --

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Q You don't remember exactly when it was.

A No. I don't remember exactly the days. I just remember the contexts of the conversations I had with him.

Q All right.

A I had a conversation about selling his stock. Then we had a conversation as far as if anybody asks you where you sold it or how you sold it the conversation was you sold it through your father-in-law's broker who was me.

Then I said to him if there's an investigation and if I have to tell I'm going to stick to the story that your father-in-law called me and you called me back to verify the order. That's what I'm going to say.

Q But that was not true.

A No, it was not true.

Q Why did you make that up?

A I didn't want him in trouble.

Q What about yourself?

A I wasn't thinking about myself. I liked him. He was a nice kid.

Q Is that the substance of your conversations of what to say to anybody if they asked?

A Yes.

Q Did you ever call anybody and tell them to go to a pay telephone and call you back?

A Yes. I did that before I went to the American

Stock Exchange.

Q Why did you call him and tell him to go to a pay phone if you were concerned with getting him in trouble?

A I wanted to verify if anybody asked him that day. If anybody asked him anything this is what I was going down to say.

Q Why did you tell him to go to a pay telephone?

A I went to a pay phone.

Q Why did you go to a pay phone?

A I just went out of the office. I went out to a pay phone and called him.

Q Did you tell him you were at a pay phone?

A Yes.

Q Why did you tell him that?

A That nobody would hear me.

Q Did you tell him not to tell anyone that you called him?

A I don't know. I think that was the day I was going down to see the attorney for Edwards & Hanly who was going to take me down to the American.

Q Stock Exchange.

A That's correct. I said this is what I'm going to say. Is this what you want to go along with and he said yes.

Q Did he have any reservations? Do you have any reservations?

1 A Not then.

2 Q Did you tell him you were doing this to protect
3 him to keep him out of trouble?

4 A I don't it came out directly that I said that.

5 Q Did you tell him that you needed him to tell this
6 story to keep you out of trouble?

7 A No.

8 Q Did you subsequently call Mr. Maione?

9 A Yes. I called him that afternoon also.

10 Q Did you tell Mr. McMahon that you wished for him
11 to contact Mr. Maione also?

12 A No. I told Mr. McMahon I had called Mr. Maione.

13 Q Had you ever talked to Mr. Maione before?

14 A I don't remember.

15 Q What did you say to Mr. Maione?

16 A I said my name is Marvin Rauch, do you know who I
17 am? He said yes, I think you're a friend of my son -- a
18 friend of Jim. I said if anybody asks you anything just
19 say that you called me to sell your stock.

20 Q Why did you want Mr. Maione to say that?

21 A To protect Mr. McMahon.

22 Q Again to protect Mr. McMahon. Is this the story
23 you subsequently told the American Stock Exchange that Mr.
24 Maione called you and told you to sell the stock?

25 A Yes.

Q What was Mr. Maione's response?

A It was a two second call.

Q What did he say?

A Nothing. I said I would call him back later when I could talk.

Q Did you call him from a pay phone too?

A I think so.

Q So you went to the American Stock Exchange and told them a story you knew to be false.

A Yes.

Q Did you ask any other customers or relatives also to tell false stories if they were questioned?

A I did not.

(Discussion off the record.)

BY MR. RUBEN:

Q Did you suggest to Mr. McMahon that he call Mr. Maione regarding this story you had arranged?

A No.

Q Did Mr. Maione give you any positive or negative response?

A Nothing.

Q Did he respond with any words at all?

A No. I just said to him I would call him back later when I could talk.

Q Did you get back to him?

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1 A. No.

2 BY MR. DRAKE:

3 Q You testified you don't recall the exact day of
4 these phone conversations.

5 A That's correct.

6 Q This is after the Monday following the 22nd.

7 A I would say so. You mean when I had the con-
8 versation with McMahon?

9 Q Yes.

10 A About this?

11 Q Yes. Was it over the weekend?

12 A This was before I was going down to the Exchange.

13 Q Do you recall calling Mr. McMahon and telling him
14 you were in a pay phone and for him to go to a private place
15 and call you back?

16 A Yes.

17 Q And that was in a pay phone.

18 A I was in a pay phone.

19 Q Did you say I'm in a pay phone. Go somewhere in a
20 private place and call me back at this number?

21 A I said to him I'm calling from a pay phone. Call
22 me right back. I gave him the number.

23 Q Why did you tell him to call you right back?

24 A I wanted to talk to him alone.

25 Q Did you tell him to go somewhere where he could

talk and then call you back?

A. I don't recall.

Q. Why would you tell him to call you back. That's what I don't understand. You're already at a pay phone. Where was he? At work?

A. Right. I called him at Geon. I called him through the switchboard.

Q. You called him to tell him to call you right back. Why did you do that?

A. I don't know.

Q. Were you concerned that Mr. McMahon wouldn't have privacy talking to him through the Geon switchboard? He should go to a private pay phone?

A. I think when his secretary put me through where he was I think I heard voices. I heard other people in the room. I think it was call me right back when you can talk. Somebody else answered the extension and I said could I have Jim please. He said hold on and got Jim on the phone. So I said call me right back.

Q. He called you back at the pay phone.

A. Right.

Q. This is when you suggested he should tell anybody if he's asked that Malone had called you to tell you to sell his stock.

A. Yes.

Q And this is what you told Mr. McMahon to say.

A That's how it worked out.

Q What do you mean worked out? He wasn't getting ready to testify, was he?

A I said to him if anybody asks you if you sold the stock tell them yes because you did. I said I'm going down to the Exchange for an investigation. I don't know how it came about, whether I said to him or he said to me, I don't recall, but Maione called me on Thursday and he called me back Friday morning to verify the order.

I said you had to talk to me between those two days.

BY MR. McCONIHE:

Q Let's figure that the day you called him was Monday. You left your office and went to a pay phone. Where is that pay phone?

A About three or four doors away from the office.

Q You went down the street and into a pay phone.

A In a restaurant.

Q You called McMahon.

A Yes.

Q What did you have in your mind at the time you called McMahon?

A That I was going down to the Exchange and wanted to work out in case somebody asked him that he don't get

himself in trouble.

Q Why did you call him?

A To tell him I was going down.

Q And what else?

A That's all.

Q You were only calling to tell him you were going to the Amex.

A And what I was going to say.

Q You were also calling to tell him what you were going to tell the Amex.

A Correct.

Q So you called him and when you first spoke to him what did you tell him?

A I said I have to go down to the Exchange.

Q That's not the first thing you told him. Isn't the first thing you told him to go to a private --

A Right.

Q I'm asking you what's the first thing you told him.

A I told him to call me right back.

MR. ELLERMYER: I don't think it's proper to go around and around on this.

MR. MCCONLINE: I don't either, as long as the witness is consistent with what he's telling us but it changed every time.

MR. ZELERNYER: I think the record will speak for itself as to whether it has changed or not. I don't think it has. I think questioning by four different people has a tendency to confuse the witness and we're talking about several occasions which he stated at the outset he couldn't specifically identify. I think it's unfair to badger him this way.

MR. MCCONNIE: I think at this point in time we're focusing on one conversation and if the witness can't recall that's one thing.

MR. ZELERNYER: In suggesting what you think is an inconsistency you're talking about two conversations.

MR. MCCONNIE: I'm only talking about one now.

MR. ZELERNYER: You asked him what the first thing he said was and he said I'm going to the Amex and you said no, that's not the first thing you said. The first thing you said was go to a pay phone.

The fact is that these are separate conversations and that's what I mean about being confused here and about several people questioning and the witness not being able to get straight which conversation you're talking about.

You're talking about the second conversation when Mr. McMahon called Mr. Rauch at the pay phone. Fine, but don't charge him with inconsistencies arising from a separate conversation.

BY MR. MCCORMICK:

Q Let's focus in. You're at the pay phone and you call Mr. McMahon and you tell Mr. McMahon what?

A Call me right back. I'm at a pay phone.

Q Did you tell him anything else?

A No.

Q You gave him the phone number?

A Yes.

Q Did you tell him anything else?

A No.

Q What was the next thing that happened?

A The phone rang.

Q What did you tell him?

A I said I have to go to New York. I have to go to the American Stock Exchange. I said I just want to get something straight. He said what do you want to do? I said evidently they're going to ask you if you sold your stock because there's an investigation and if they ask you you have to say yes because you did sell your stock.

I said what do you want to do about it. Do you want to leave it that Malone called me or do you want to say Malone called me and you called me back to verify the order or do you want to do it that you called me?

He said let's leave it that my father-in-law called you on Thursday and I called you on Friday to verify the order.

"This page is from an exhibit that was marked for identification, but was not received into evidence."

Q This was Mr. McMahon's suggestion that the story should be that his father-in-law called you.

A Correct. I don't know if this is what I impressed on him or he impressed on me. I just can't remember that, but this is what the outcome was of that conversation. This is what I was going to testify to.

Q At the time you were having this conversation with Mr. McMahon had you already spoken with Mr. Maione?

A I don't remember. It might have been then or right afterwards.

Q Can you recall whether you indicated to McMahon that I've already cleared this with your father-in-law or something to that effect?

A I don't remember.

Q Do you recall Mr. McMahon raising the question who is going to speak to my father-in-law?

A Not in that conversation.

Q Was there any arrangement made as to who would speak with him?

A There was a conversation I had with Mr. McMahon where I told him that I called his father-in-law and he said what did he say. I remember telling him that. I don't remember if it was the same conversation or one after that. I don't remember. He said what did he say and I told him that I would call him back to discuss it with him.

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I never did. This was right when I went to the American.

Q Let's turn then to the conversation that you had with Mr. Maione. Where were you when you called Mr. Maione the first time you called him?

A I only called him once.

Q Okay. The only time you called him.

A I don't remember if I was in a pay phone or in the office.

Q Do you recall having made more than one trip to that pay phone?

A No.

Q So it was only one trip that you made.

A That's correct.

Q At the time you made the trip to the pay phone you called Mr. McMahon and Mr. Maione in that one trip.

A I think so.

Q When you called Mr. Maione what was the first thing you said to him?

A I said, Mr. Maione, this is Marvin Rauch. Do you know who I am? He said yes, you're Jim's friend. I said there might be a problem so if anybody asks you how you sold your stock you called me on Thursday afternoon. I says I can't talk now to you but I can talk better tonight.

Q Did he say anything to you after you said that?

A Not a word.

"This page is from an exhibit that was marked for identification, but was not received into evidence."

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Q So you left it that you would call him that night.

A That's correct.

Q That was the only conversation you had with him.

A That's correct.

Q Why didn't you call him later that night?

A I think I spoke to McMahon that night. I went over the story with him again and what we were going to say.

Q At that point in time had you appeared at the American Stock Exchange?

A No. This was the night before I had to go down.

Q What did you discuss when you called Mr. McMahon that time in the evening?

A The same thing again.

Q Where were you when you were speaking with him at that time?

A At home.

Q Where was he?

A At home.

Q What did you say to Mr. McMahon in that conversation?

A I said I'm going down to the American tomorrow morning because I had to see the lawyer this afternoon and I told the lawyer that your father-in-law called me to sell the stock on Thursday afternoon around 4:00 and you called me up Friday to verify the order.

That's all I really remember in that conversation.

Q What was his reaction?

A I really don't know. He was tired by then. He was like dead.

Q What time was this?

A I think it was about 10:30.

Q Did he have no reaction?

A I think he called me from Geon that night and then he called me when he got home. And I said I don't want to talk to you until you get home. That was the night before I went to the American.

Q In the first call there was no conversation of substance?

A Not really.

Q Did he indicate why he was calling when he called that first time at night?

A I don't think so.

Q Then in the second telephone call between you and Monahan that night it was you that called him or he that called you?

A He called me. He had just got home from work.

Q This was 10:30 at night about.

A It could have been later. I think it was around midnight.

Q That's when you discussed what you told the Edwards

Q. Manly lawyer.

A. Right.

Q. What was his reaction to what you were telling him?

A. I don't know. I remember him saying Marvin, I value your friendship.

Q. Did you indicate to him in the course of that conversation that it was his interests that you were protecting?

A. I might have. I don't recall. I know it was going through my mind but I don't know if I told it to him.

Q. Did you ever speak to McMahon's wife about this story?

A. No. Yes. Not about the story.

Q. What did you speak to her about.

A. After I went to the American Stock Exchange -- I told them what we had worked out. I got back to the office around 4:00 and thought I was going to collapse. My wife was waiting for me. I said I don't feel good. I didn't tell the truth and it's killing me.

Now they wanted me back at the American.

Q. When did you learn that they wanted you back at the American?

A. As soon as I got to the office. The minute I walked into the office they said the American wants me.

I said hello to my wife and Mr. Rosenfeld got ahold of me and said the American wants you back. I told my wife what happened. I don't think my wife really knew what I was doing.

I went back. Before I went I went upstairs and called McMahon.

Q Where are you now?

A In the office. I called up his wife and I asked her -- I said Morsen, is Jim home?

Q Are you at the American Stock Exchange?

A I'm outside at the pay phone in front of the American. I called her up and said I'm beat. This thing is killing me. She said to me, Marvin, tell the truth. I said that's why I'm back here to tell the truth. That was the whole conversation.

I went back to the American and haven't spoken to him since.

Q Was this the first time you had talked to Mr. McMahon's wife since the previous weekend?

A I don't remember.

Q Was there any discussion during that telephone conversation with respect to McMahon's wife getting her father to go along with the story?

A Not in that conversation. There might have been a conversation where McMahon said she might talk to her father. There was something of that nature.

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Q Did you ever, to the best of your recollection, speak with McMahon's wife and ask her to get her father to go along with the story?

A No.

BY MR. DRAKE:

Q You have no recollection of that?

A Not at all.

Q Is that something you would be likely to remember?

A I would think so.

MR. ZEIERMEYER: May I have a minute outside?

(Discussion off the record.)

MR. McCONIFF: Back on the record.

BY MR. RUBIN:

Q Mr. Rauch, at any time during your conversations with Mr. McMahon about the stories each of you might have to tell were there any discussions that you would state you thought McMahon was an employee of Arthur Anderson and McMahon should state that he had told you he was an employee of Arthur Anderson so there would be no question of McMahon's trades and whatever knowledge you may have had that he was not an insider at Geon.

A That was at the beginning when I opened up the account.

BY MR. ERNIE:

Q But that was not part of the cover-up story.

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A. No.

BY MR. RUBIN:

Q. You had that conversation when you opened up the account and put down Arthur Anderson so if Mr. McMahon made any trades for Geon it wouldn't appear he was an insider.

A. Yes.

Q. Was that at your suggestion or McMahon's suggestion?

A. McMahon's suggestion.

BY MR. McCONINE:

Q. Do you know Mr. Edward Moore?

A. No.

Q. Never heard of him?

A. No.

Q. You don't know him as an employee of Faulkner, Dalton & Sullivan?

A. I do not.

BY MR. DRAME:

Q. Is it your testimony that on the morning of the 22nd you had no conversations except those you indicated about the execution of the trades with Mr. Rosenfeld. You had no other conversations with Mr. Rosenfeld or Mr. Lynn about your transactions in Geon securities that morning.

A. Not that I recall.

BY MR. RUBIN:

Q You did not suggest to them directly or indirectly on the morning of February 22 to sell any of their shares for Geon for their customers' accounts?

A That's correct.

BY MR. DRAKE:

Q During your phone conversations with Mr. McMahon concerning the cover-up story --

MR. ZILBERMAN: We don't need to characterize it as a cover-up story.

BY MR. DRAKE:

Q At any time during your conversations with Mr. McMahon did you mention the fact that he owed you \$2,500?

A No.

MR. MCCORMICK: We don't have any further questions to ask the witness. Would counsel like to ask any questions to clarify anything in the record?

MR. ZILBERMAN: No. I would ask, however, one request and that is that we're down here on fairly short notice and I understand it is customary to be afforded an opportunity to make a closing statement. The witness is afforded that opportunity and Mr. Rauch has had not had time to prepare one due to the short notice.

I would request that we be given an opportunity to append the closing statement to the transcript after it is

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1 received and reviewed by the witness. I don't mean to take
2 him back into the substance of it but only to make the usual
3 closing statement.

4 MR. McCONINE: Is it your plan to submit that in
5 writing?

6 MR. ZILBERMYER: That's what I had in mind.

7 MR. McCONINE: Under oath?

8 MR. ZILBERMYER: If that is the custom, yes.

9 MR. McCONINE: Okay. We have no objection to
10 that. At this point we'll close the record.

11 *****

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OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 28, 1975

A. Daniel Fusaro, Esquire
Clerk, United States Court of
Appeals for the Second Circuit
United States Courthouse
Foley Square
New York, New York 10007


Re: Securities and Exchange Commission v. Geon Industries, Inc.,
Civil Appeal Nos. 75-7010, 74-2657 and 74-2614

Dear Mr. Fusaro:

On March 13, 1975 we transmitted to the Court by registered mail ten copies of the joint appendix for the above appeals. At the request of Jay G. Strum, Esq., counsel for appellee, Frank Bloom (No. 74-2657) and appellants Geon Industries, Inc. and George O. Neuwirth (No. 74-2614), the Commission has prepared a Supplemental Appendix for the above appeals, ten copies of which are enclosed for filing. Evan L. Gordon, Esq., counsel for appellee Edwards & Hanly (No. 75-7010) has advised us that he has no objection to the preparation and filing of this Supplemental Appendix.

Pursuant to Rule 25 of the Federal Rules of Appellant Procedure I hereby certify that a copy of the Supplemental Appendix was transmitted by first class mail on this date to opposing counsel for all parties.

Sincerely,


Van P. Carter
Attorney

Enclosure

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